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Chamberlin, R

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A PHILOSOPHICAL INVESTIGATION OF POLITICAL LIBERTY

AND EDUCATION

A THESIS SUBMITTED BY
ROSEMARY CHAMBERLIN

UNIVERSITY OF BRISTOL

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I would like to thank my tutor Gordon Reddiford for his encouragement and helpful critical comments on this dissertation, and Fred Inglis and Ieuan Lloyd for their comments on the final draft. I must also thank Jane and David Chamberlin, and all the children I have taught for refusing to allow me to romanticise about them, and for keeping me in close touch with reality. I certify, however, that despite the above acknowledgements the work that follows is my own, except where stated, and that it has not been submitted previously for a degree at this or any other university.

R P Chamberlin

A PHILOSOPHICAL INVESTIGATION OF POLITICAL LIBERTY

AND EDUCATION

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Synopsis

This dissertation explores philosophically the subject of individual liberty and the conditions of its justifiable restriction. The subject is examined both generally and with particular reference to children, their education and educational institutions in an attempt to ascertain whether the same value should be placed on the liberty of adults and children and the same criteria accepted for its restriction.

In the Introduction the shape of the dissertation is mapped out and a distinction drawn between political liberty and freedom. The distinction between negative and positive liberty is explored in Chapter 2, and the question of what counts as a restriction of freedom is addressed in Chapter 3, as the relationship between liberty and power is examined, and the traditional liberal view criticised. The claim that restrictions of freedom are justified when or because we form a contract with the government exchanging freedom for security and other benefits is criticised in Chapter 4, and the theme of consent is continued in Chapter 5 when the relationship between democracy and liberty is examined.

The place of liberty in the human rights arguments is considered in Chapters 6 and 7, in an examination of the claim that firstly adults and secondly children have a right to liberty. The comparison between the value placed on adults' liberty and that of children is continued in Chapters 8 and 9 when the subject of paternalism is discussed. This leads to a consideration, in Chapter 10, of whether restricting children's liberty by compulsory education is justified, and the dilemma posed by the ideas that education is a key to freedom while compulsory education is a restriction of it is discussed.

Finally, after considering the limits to the legitimate restriction of children's freedom in schools in Chapter 11, an account of the inter-relationship between freedom, education and democracy is attempted.

CHAPTER 1

INTRODUCTION

Introduction

The liberty of individuals living in a society with other individuals cannot be absolute and must be restricted, but how are we to decide under what circumstances limitations of liberty are justified? This is the central problem I address in this dissertation as I consider the relationship of power to the freedom of the individual, both in general terms and with particular reference to children and their education. The problem of deciding under what circumstances it is justifiable to use power to restrict the freedom of others is particularly pertinent to the question of how we should raise and educate our children because of their relative powerlessness. I investigated the relationship of power and freedom because I believe that there are certain omissions, inconsistencies and contradictions in the received wisdom of liberalism on this subject. When discussions about the legitimate use of power or the right to liberty take place children are most frequently not considered at all, or else dismissed in an aside: I am concerned to include children as members of our society and not to ignore them altogether or to assume, without examining the reasons for it, that they are quite different from adults.

The words 'freedom' and 'liberty' are generally used interchangeably, and I shall follow common usage in this, but there are some slight differences in emphasis between the terms which I would like to consider at this early stage. Firstly, the range of circumstances in which we use 'liberty' is narrower than that which is appropriate for 'freedom' and 'free'. For example 'freedom' may refer to freedom of the will as opposed to determinism, but there is no comparable use of 'liberty'. Secondly, I suggest that 'liberty' has a stronger association than has 'freedom' with what we are allowed to do, rather than just what we can do. So, with the word 'liberty'

holds that only overt and deliberate coercion restricts freedom.

In Chapter 2 I consider the distinction between negative and positive liberty, and argue that 'liberty' should not be interpreted so widely that it includes freedom from personal imperfections and limitations. We are the people that we are, I claim, and not the imperfect and unfree shadow of some ideal free self. However, although I do not accept the widest interpretation of positive or higher liberty, I argue for a broader interpretation of negative liberty. In Chapter 3 I argue that although only humanly-imposed restrictions limit freedom, this does not apply only to restrictions that result from intentional or individual actions, nor does it rule out restrictions resulting from uses of power of which the person whose freedom is limited is unaware. I find no reason to support the claim that only deliberate coercion and intentionally placed obstructions should count as restrictive of liberty, and I suggest that this proposed limitation reduces the number of cases in which freedom may be said to be restricted for a purpose other than that of clarity. If we say we value freedom, but manage to show that various social and economic restrictions suffered by some members of our society should not be thought of as restrictions of their liberty because they arise as unintentional consequences of other actions, then we may feel less of a moral obligation to make any change in our social arrangements. However, if we are to be consistent, then believing that it is basically good and right that individuals should be able to make choices about their own lives, we should not be satisfied when the unintended consequences of some other actions make this impossible. The view that restrictions must be deliberately imposed if they are to count as restrictions of liberty, (1) serves to limit the occasions on which freedom may be said to be restricted, and thus, possibly, to perpetuate the restricted circumstances of many people's lives by reducing the determination and sense of obligation to promote change.

In my attempt to discover the conditions under which restrictions of liberty are justified, I criticise the individualistic liberal view of liberty also for its assumption that individuals are logically prior to society, and have only the obligations they choose to accept. This criticism arises first in Chapter 4 in relation to liberal views of social contract according to which restrictions of liberty are legitimate because (or when) they have been agreed freely, and it recurs throughout the dissertation. I claim that the pre-social obligationless individual is a fiction and an impossibility, and that as social beings we have some non-contractual obligations to other members of our society whether we choose them or not. Thus we do not start with liberty, tout court, and freely agree to the obligations which restrict it, but rather we take part in the social process of defining and delineating both our obligations and our liberties. This process of participation is investigated most fully in Chapter 5, "Liberty and democracy", in which I argue that participation in the creation of a just society is one of our non-contractual obligations and that a large measure of personal liberty is necessary for us to be able to discharge it properly.

In Chapters 6 and 7 I consider the question of whether we, adults and children, have the right to liberty. If adults but not children are said to have this right, then there must be some relevant difference between them which justifies their different treatment, and this is the case also with paternalism, which I examine in Chapters 8 and 9. It is generally accepted that restraining people's liberty for their own good (as opposed to preventing harm to others) is illiberal and justified only rarely if at all. However, most of what has traditionally been written about paternalism just assumes that children form an exception to the libertarian rule, (2) while the more modern radical critique tends to minimise the vulnerability of the young and their need for protection and guidance. (3) When I consider whether we have a

right to liberty or whether compulsion should ever be used in the interests of the person who is compelled, my conclusions refer to children as well as adults, and the grounds for any differences in their treatment are examined.

Following the investigation of whether paternalism is justified and if so under what circumstances, I consider the problem of whether children should be compelled to attend school. The question of compulsory education is sometimes seen as a matter of infringing the parents' right to educate their children as they wish, free from interference of the state. However, I do not tackle it from the angle of parental freedom, and am critical of the claim that bringing children up to be aware of certain values and ideas is right when done by parents, who, it is said, have the right to determine what their children should believe, yet wrong when done by the wider community to which children and parents belong. I look at the question from the point of view of the freedom of children, not their parents, and am interested in the dilemma posed by the ideas that knowledge is essential for liberty and that education, particularly compulsory education, is a restriction of it. It is interesting that both the traditionally-minded opponents of compulsory schooling and the radical deschoolers stress the responsibility of the family for the child's education. (4) I argue that children are neither simply individuals or members of a family, nor possessions of their parents but members of a wider society, and therefore that society has an interest in and responsibility for their education. It should not be thought of a matter of concern only for children and their parents.

However, despite my acceptance of the need for all children to be educated, and my lack of faith in various suggested alternatives to compulsion, I am concerned that the limits to justified adult direction of children should be clearly drawn, and kept to the necessary minimum. In Chapter 11 I consider the freedom children should be allowed in school

in academic and social matters, and this leads on, in Chapter 12, to a discussion of children's political liberty, political education and democracy in school. The main subject of this chapter is the inter-relationship between liberty, democracy and education. In it I refer back to the arguments on the relationship between democracy and liberty, made in Chapter 5, and consider the implications for our schools and education system of an acceptance of the principle of democratic participation.

The views on liberty which are held in any society will have important implications for the way children should be educated, and for their relationship with adults. However, in liberal democratic societies, such as our own, the relationship between what is claimed about the value of liberty and what goes on in our schools, homes and communities is less close than it might be. This is due, I suggest, to the neglect of children, their exclusion from membership of our society, and the arbitrary distinction commonly drawn between what is thought to be right for them and what is claimed to be right for adults. I do not refer to their physical neglect and exclusion, of course, but to the fact that in discussions on how we should live, what people should be allowed to do, and what are the values that should govern our dealings with each other, children are largely forgotten. We can sustain a false view of ourselves as a society of independent individualists, owing little or nothing to anyone else and having only the obligations we have chosen for ourselves, only because we do not include children as part of that society. Little attempt is made to create a value-system which takes account of the dependence and particular needs of many children (and some adults) and also of the desire and capacity for self-determination and autonomy of many adults (and some children.) In this dissertation I try to begin to remedy this.

References

1. See, for example Hayek, The constitution of liberty P.11
where he calls freedom "the state in which man is not subject to coercion be the arbitrary will of others."
Berlin, Four essays on liberty P.128 "Coercion implies the deliberate interference of other human beings ...You lack political liberty or freedom only if you are prevented from attaining a goal by human beings."
2. See, for example, Mill, On libertyP.78
"It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children or of young persons below the age which the law may fix as that of manhood or womanhood."
3. Of course the 'radical critique' is not a cohesive doctrine, and differing views and perspectives are found among those who argue for an extension of children's rights of action. Nevertheless, I would argue that Holt, Escape from childhood and Reimer School is dead exemplify the radicals' underestimation of the problems that children would face organising their own lives.
4. See, for example Rickenbacker, The 12 Year sentence for traditional arguments on parental responsibility based on parents' rights, and Reimer, op. cit. for the radical deschoolers' view. Reimer assumes that where children are not capable of directing their own education their parents would do it for them or put them in contact with those who would.

CHAPTER 2

NEGATIVE AND POSITIVE LIBERTY

Negative and positive Liberty

The traditional liberal view of liberty or freedom is that it is the absence of restraints deliberately imposed by human action.(1) According to this view, if we are not subject to intentional coercion then we are free regardless of other impediments which may prevent us from doing what we wish, or what we might have wished had we known of the alternative possibilities. This concept of liberty is an extension of the basic, minimal interpretation described by Hobbes: that freedom is the absence of impediment to motion (2), and it itself has been extended further in several different ways, until as Gibbs says

"To investigate freedom is to enter a labyrinth of concepts and principles and face problems as complicated and intractable as any in philosophy" (3)

There is the idea that to view freedom as a mere absence is too negative a way of looking at something as precious as human freedom, and so it has been claimed that freedom must be positive, active or, as Joyce Cary put it, "Not an absence but a power".(4) Then it has been argued that if external restrictions to human action count as limitations to liberty, so should 'internal' restrictions to self-fulfilment, for these are restrictions to the realisation of what a rational person would most desire. (5) No two accounts of freedom appear to view its boundaries, its problems and dilemmas in the same way, but much of the debate centres on, or at least starts with, the idea that there are two concepts of liberty - negative and positive liberty, and so that is where I shall start also.

The difference between negative and positive liberty has often been conceived as the difference between 'freedom from' and 'freedom to'. However, MacCullum argues that this distinction is false because freedom is always one and the same triadic relation: freedom of an agent or agents, from something, to do (or not do) something (6), and that

"anyone who argues that freedom from is the 'only' freedom, or that freedom to is the 'truest' freedom, or that one is 'more important than' the other, cannot be taken as having said anything both straightforward and sensible about two distinct kinds of freedom. He can, at most, be said to be attending to or emphasizing the importance of only one part of what is always present in any case of freedom." (7)

Thus far I believe MacCullum is right. It is mistaken to look on a traditional negative liberty such as being allowed to dig your own garden or choose your spouse as simply 'freedom from' and therefore a different kind of freedom from the positive 'freedom to' stand for Parliament or run your own business. Both are freedom from certain restrictions to perform certain actions, (and the fact that the first are seen as private and the second as public or political acts is irrelevant.) Berlin says that people could enjoy a large measure of negative liberty under the rule of a liberal-minded despot, (8) but if this means that he merely leaves them alone as long as they do nothing which upsets him then they have freedom only as long as their plans of what they want to do are modest or the despot is in a good mood; and if it means that they are allowed to choose what they do, then at once they are exercising positive liberty, because in the particular sphere in which they are acting and choosing they are "doers, deciding not decided for". (9)

However, MacCullum goes further than saying simply that all freedoms are both from and to. He claims that as the distinction between negative and positive freedom is simply the difference between freedom from and freedom to - a difference which does not exist - there is, therefore, no distinction to be made between negative and positive freedom, and all that has previously been said on the subject is based on error. (10) MacCullum is mistaken, however, in his premise that there is no more to the negative/positive distinction than the difference between from and to. It is true that Berlin sometimes refers to the difference in this way, (11) but, as Baldwin points out (12) closer examination reveals that neither Berlin, nor others who make use of the

distinction consistently equate 'freedom from' with negative liberty, nor 'freedom to' with positive liberty. The terms are also used to refer to so-called 'lower' and 'higher' freedoms. Despite some confusion, it would appear that the difference between negative and positive freedom is generally taken to be more than the from/to distinction, and it is also accepted (if only spasmodically) that, as Bosanquet put it

"The higher sense of liberty, like the lower, involves freedom from some things as well as freedom to others" (13)

If both higher and lower, positive and negative, freedoms involve freedom from as well as freedom to, then clearly the difference between them is not that higher positive freedom is 'freedom to' while the lower, negative freedom is merely 'freedom from'. It may be that there is no 'freedom from' that is not also a 'freedom to' (and vice versa) and yet there still could be a distinction between negative and positive freedom, (or between different kinds of freedom) rather than simply different things we are free from and different things we are free to do. In order to discover if this is the case it is necessary to look more closely at various interpretations of 'freedom' and see what are considered to be 'higher' and 'lower' as well as negative and positive freedoms.

T.H. Green distinguished between juristic and moral freedom, both of which are both freedom from and freedom to. Juristic freedom is the power to act according to choice or preference in the absence of constraints imposed by other people, while moral freedom is the power to realise the moral ideals to which one is committed, unimpeded by conflicting desires. (14) As the conflict which is envisaged is not between two equally worthy desires, but between long-standing moral ideals and short-term or unworthy impulses, the conquering of the urge to give way to such passing whims or low desires is seen as increasing moral freedom. The extension of 'freedom' to cover 'internal' constraints as well as 'external' ones is justified on the grounds that

disabilities and defects of character can prevent people from attaining their desires as certainly as can external constraints. This is true, but there are problems in extending 'freedom' to cover freedom from our personal inadequacies as well as external constraints, for it raises questions about what we mean by a self. It might seem reasonable to talk about a person addicted to drugs or alcohol being freed from his addiction, and, once free, becoming his 'old self' again. Similarly one could be freed from an obsession to continually wash one's hands or check ten times each night that the electric fires are turned off before going to bed. These are disabilities, however, which not only are felt as obstructions which would prevent people from achieving their purposes, but are seen also as deviations from a norm of human behaviour. It is thought, therefore, that if the addiction or the obsession could be overcome the person would be both freer to do what s/he wanted, and nearer (or restored to) his or her real self or true nature. I would argue, however, that this does not apply to other less extreme or non-pathological personal defects and disabilities.

I may be handicapped in the advancement of my career because I suffer from nerves to an extent that prevents me from speaking well in public. I might like to be able to hold forth and sway audiences with my eloquence, and if I managed to overcome my nervousness my freedom to do various other things I wished to do might thereby be increased. However, I would not be realising my real self or true nature by overcoming my nerves, but changing into a less nervous person who enjoyed public speaking. It is not the case that I am naturally a bold orator who is held back by some defect which, once shed, would reveal me in my true light as a speaker in the Churchillian mould. My nervousness when faced with an audience is part of my self - a great deal more real than any imaginary orator. To assume otherwise is to postulate that we have a 'self' which

is quite different from the person our friends know, different from the person revealed in our speech and actions, or the person we know ourselves to be, yet is in some way more real and more truly ourselves. It is to suggest that, say, Oscar Wilde or Dorothy Parker without the spice of malice would be more truly Wilde and Parker, instead of, as I would claim, less so. Our ordinary, normal defects, inadequacies and disabilities are part of ourselves: indeed the very fact that they are called 'internal' obstacles to freedom suggests that this is the case. The internal constraints which I have accepted might be thought of as restrictions to freedom - addictions and neuroses - have something more of externality about them. This is partly because we can imagine them being removed and leaving our selves in tact, but partly because they seem to have been imposed from without, and are contrary to normal healthy human nature. Laziness, timidity and other personality defects are not, and so it does not seem to me to be right to equate our virtues with freedom and our vices with constraints.

If we struggle to overcome a personality defect or conflicting desires in order to achieve an important purpose I claim it is more accurate to describe this as the development of a self (with the struggle being part of the development) rather than the removal of internal obstacles to freedom. I cannot stipulate against the broad use of 'freedom' for the absence of character defects, however, and must note that it is often used in this way. Green's moral freedom is similar to what Gibbs calls 'natural freedom', the

"freedom to develop one's higher potentialities, to satisfy ones nobler desires, to become a mature and happy person, to prosper and flourish as a human being" (15)

but, I would argue, being noble, mature, happy, prosperous and flourishing is not the same as being free. Indeed sometimes it is our virtues which prevent us from doing what we want, and so, if our less desirable personality traits are thought to be constraints on our freedom, then our

virtues would have to be considered in that way as well.

Although Gibbs' 'natural' freedom is similar to Green's moral freedom, Gibbs divides 'lower' freedom into six categories. Firstly there is prescriptive freedom, which is akin to Hobbes' "silence of the law", and is freedom from servitude within certain limits. Then there is civil liberty which is a form of prescriptive freedom but is more than simply being left alone to do what one wants within certain limits. Civil liberty, according to Gibbs, is roughly

"that form of prescriptive freedom whereby private welfare is secured against the arbitrary encroachments of public power" (16)

This is the traditional liberal interpretation of civil liberty according to which we are not only free to act as long as there is no law against what we want to do, but which guarantees and protects certain basic freedoms.

Gibbs then defines four types of non-prescriptive freedom. First there is optative freedom which we have when we are not prevented from doing something. However, Gibbs' interpretation of 'prevention' is very strict, for a person walking along with a gun in his back and a dagger at his throat would have optative freedom as long as he was moving his legs himself and not being pushed. A person with optative freedom enjoys (though 'enjoys' is perhaps not the right word) Hobbes' basic freedom of absence of impediment to motion but nothing more. To have conative freedom on the other hand requires that there should be some degree of choice, although it is not necessary to have a selection of agreeable alternatives from which to choose, as it is for elective freedom. Force and violence destroy both conative and elective freedom, but to have conative freedom is not to be able to do as one wants but simply to have some choice beyond that of merely acting. Finally, beyond elective freedom Gibbs distinguishes the natural freedom mentioned above, which is 'natural' not because it is either inalienable or exercised by all people naturally, but because when someone

has that freedom s/he is acting according to human nature as it should be. As I argued earlier, to be virtuous is not the same as being free. It might be the case that when we develop fully the potential of our human nature we are free, (because it is in our nature to value freedom, and so freedom and the mature, autonomous person go together); but the view that becoming good will make us free carries the dangerous implication that by making people do what is right we make them free. This is not so.

Gibbs' list of types of freedom, though extensive, still does not exhaust the possibilities, as he misses out an important traditional conception of higher or positive freedom - that freedom is to be found in determining the conditions of the life of one's community by participating with others in public and political life. (17) Gibbs' concept of natural freedom is largely individualistic: it is achieved by individuals who overcome their own internal conflicts or defects and thereby realise their own true natures. He neglects the tradition, expressed by Rousseau and Marx, which, though it also views positive freedom in terms of self-determination, holds that this is achieved through collective control over the conditions of life in a community. This is the tradition of positive liberty which was criticised by Berlin on the grounds that it could lead to totalitarianism and the paradox of forcing people to be free. Its caricature is well known: an oppressive society in which individual liberty is despised by those in power, and coercion is thought to be justified in order to force people to do what is in their 'real' interests or what accords with their 'true' natures, however much this may be at odds with what they say they want. However, the idea does not have to be taken to extremes or caricatured, and there is a real sense in which freedom as self-determination or having control over the circumstances of one's life should not be seen in purely individualistic terms. Our lives are influenced not only by our decisions and those of other individuals

but by joint decisions and the rules of our society. Self-determination therefore requires participation in the making of those decisions, and so if self-determination is one kind of freedom, participation in public affairs must be also.

Faced with so many different kinds of freedom, it is hard not to feel drawn to the simplicity of MacCullum's thesis that all freedom is just *from* something and *to* something; and that what makes the difference is not that there are different types of freedom but simply that there are different 'somethings' that we may be free from and free to do. Thus the optative freedom to walk down a corridor with a gun in one's back is not a different type of freedom from the elective freedom to choose whether to go to the cinema, the theatre, the pub, or stay home: it is simply that the former is freedom from impediments to moving one's legs to walk down the corridor, and the latter is freedom from various constraints to choose what to do on a Saturday night. Having said that, the next point to make is that of the many different things we may be free to do, some are generally considered to be more important and more valuable than others; and of the many things we may be free from, some are generally considered to be more oppressive or disagreeable than others. Freedom to write with our left hands if we prefer, or the restriction of having to drive on the left of the road are real freedoms and real restrictions, but they are not important ones, and so we do not give much time to considering them. The freedom to move one's legs despite having a gun in one's back is not a freedom that normally we would value highly (except, of course, when contrasted with being shot or forcibly thrown down the corridor); nor is the freedom to choose between six washing powders with different names but essentially similar cleansing properties. Plain freedom is not of great value, but certain freedoms are, and the questions which arise then are what are the things we should be free from and free to

do: what, in other words, are the significant actions that humans do value and should value? Although I would maintain that, strictly, freedom is the absence of constraints to action, the freedom which concerns us and which we strive to maximise is the absence of constraints to do the things that matter to us and achieve the purposes we consider important.

However, even if all freedoms are both from and to, and what matters is which actions we are free to perform, the claim that there is some type of higher freedom of a different order from other freedoms has still to be looked at more closely. One basic difference is said to be that all negative freedoms are what Charles Taylor calls opportunity-concepts (18) because, in the absence of certain external constraints the agent has the opportunity to act if s/he so wishes, and not if s/he does not. With positive, higher or moral freedom, on the other hand, it is sometimes claimed that persons are not only free to realise their human potentialities if they wish, but are not free unless they do. Freedom as self-realisation, then, is said to be an exercise-concept.

Clearly it is not necessary actually to do something in order to have the basic negative liberty to do it. On the contrary, if we are free to choose between alternative courses of action the possibility must be open for us to choose not to do it. If I am free to go to the cinema, then I must be free not to go, for if this were not the case, then I would not go to the cinema freely, and would not be free to go, but constrained to go. If we are free to choose what we do, but do not have to do it, then we do not have to be active and enterprising in order to be free. We can choose to opt out rather than join in, and to drift with the tide rather than steer our own course. It may be true (I believe it is) that a person who never makes use of the opportunities for choice wastes his or her freedom: it may be the case that continued refusal to make

some choices and act on them will result in the opportunities disappearing and the freedom withering away (although this is not always the case); but if we are free we must surely be free not to take opportunities. The unmolested drop-out or total conformist are as much part of a free society as the Hyde Park orator, the business entrepreneur or the initiator of a pressure group, and if we feel that what they are doing is undesirable or socially harmful, we do not have to conclude that they are not free, but that their particular exercises of freedom are undesirable. Freedom is still freedom even when it is undesirable.

However, Taylor argues that as freedom is concerned with our ability to achieve our more significant purposes, it requires that we actually exercise self-determination, and not merely that we could if we chose to, but could equally well choose not to.

"Freedom.. involves my being able to recognise adequately my more important purposes and my being able to overcome or at least neutralise my motivational fetters, as well as my way being free of external obstacles. But clearly the first condition (and, I would argue the second) require me to have become something, to have achieved a certain condition of self-clairvoyance and self-understanding. I must be actually exercising self-understanding in order to be truly or fully free. I can no longer understand freedom just as an opportunity-concept" (19)

The distinction between freedom as an opportunity-concept and freedom as an exercise-concept was first used to explicate the difference between negative freedoms which were simply the absence of constraints, and the higher, positive or moral freedom of self-determination which cannot exist unexercised. However, Taylor's comment in parenthesis indicates his belief that even the negative freedoms require more than the absence of external constraints. As I shall explain, I believe he is right to say this, but wrong to conclude that therefore freedom cannot be simply an opportunity-concept.

Freedom and liberty are concepts which we apply to human beings. We do speak, it is true, of animals in captivity being unfree and their counterparts in the jungle

or on the plains as being free, but when we speak of freedom in the sense of the opportunity to choose between different courses of action we are using a concept applicable only to rational beings, because choice requires rational thought. Now there can be different degrees of freedom, and there are differences also in the quantity and quality of deliberation required for a rational choice to be made (and a rational decision does not have to be a reasonable decision). I am not claiming that people who do not ponder lengthily about what they should or will do are unfree, or even that they are less free than the thinker. However, they may be less free with respect to certain actions, just as those with little knowledge of the possibilities that are open to them will be less free with respect to certain actions than those with more knowledge, and those with little self-knowledge will be less free in certain respects than those who know what their important purposes are, what are the personal inadequacies which impede the achievement of their purposes, and how they might overcome them. My point (and Taylor's) is that the rationality and self-knowledge which, it is said, must be exercised for higher moral freedom must also be exercised in varying degrees for the lower, negative freedoms as well.

However, I do not conclude from this that neither higher nor lower, positive nor negative freedoms should be thought of as opportunity-concepts, and that therefore both (or all) are exercise-concepts. I believe that freedom is an opportunity-concept, but that the necessity for human rationality is built into the concept of freedom at all but the most basic Hobbesian level. Indeed, rationality is built into the concept of an opportunity also, as for an opportunity to exist there must be someone who can recognise that there is a possible course of action which might be taken or might not. I would not claim, of course, that there are no such things as missed opportunities or opportunities that we did not recognise until too late. It

is simply that the idea of an opportunity requires a rational being who could recognise it. Non-rational beings may have different things they could do, but they do not have opportunities or choice, and they do not have any but the most basic freedom either. The frogs in my garden can hop up the path or into the pond, but to talk of them 'choosing' or having freedom of choice as to which action they perform is anthropomorphism. Freedom in all but the most basic sense cannot be exercised without rationality, but that does not make it more than the absence of constraints, or rather it makes it the absence of constraints to the possible actions of rational beings. The actions are still only possible, however, and not inevitable.

To make full use of our freedom and opportunities for choice we require amongst other things rationality, understanding and self-knowledge, but freedom is not the exercise of these qualities, it is the absence of constraints to our achievement of our purposes. Because we value freedom so highly, there is, as I said earlier, a feeling that it must be more important than a mere absence. However, it is not simply freedom that is valuable, but certain freedoms to achieve the purposes we think most important. Being the absence of constraint makes it no less valuable than it would be if it were defined as power, action, or the act of making choices. If it is the absence of undesirable constraints and is necessary to achieve other valued ends then it is still precious, but being precious does not make it rationality, or self-knowledge, or goodness, nor does it make it an activity or a power.

References

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ends of another."
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CHAPTER 3

LIBERTY AND THE RESTRICTION OF LIBERTY

Liberty and the restriction of liberty

Freedom is not power, I have argued, but it is related to power, nonetheless, for not only is having the power to do something akin to being free to do it, but having power over others limits their own freedom to do what they choose. The point where we often begin to question the desirability of certain freedoms is where they conflict with the freedom of others and where one person's freedom is another's restriction. The distinction between 'power to' and 'power over' is a useful one, but there are some exercises of power which do not fall neatly into one category or the other. On the one hand there is, say, the person who votes, marries or sells his house - things he has the power and freedom to do - and on the other is the dictator who has power over others to restrict their freedom and make them do what he orders. However, what would we say about the farmer or developer who fells trees against the wishes of local conservationists? In one sense he is just exercising his own power to do something, for he is not forcing others to do anything, but in another sense he does have power over the others, and power to restrict their freedom, because his wishes prevail over theirs, and they are forced, if not to do what he tells them, at least to put up with what he does. However, despite the grey area in the middle, it is a useful distinction and I shall use it as I examine some of the ways in which freedom is restricted, and argue that much more is encompassed by the notion of a restriction of freedom than the liberal notion of deliberate human action.

The clearest example of one person having power to restrict another's freedom is when physical force is used. If X frog-marches Y out of town then, Y is not free to stay, and there can be no disputing that X's power over Y diminished Y's freedom. Moving away from that extreme example,

we come to the situation in which X does not use force but threatens Y with unpleasant consequences unless he leaves town. It is sometimes argued that threats do not diminish freedom because freedom is doing what you wish or choose, and once a threat is made then what you wish changes to take account of the new circumstances. According to this argument, Y may want to stay in town, but when offered the choice of staying and being strung up from the highest tree with his wife and family while his farm is burnt to the ground he changes his mind and wants to go. He makes a choice in the new circumstances and is, therefore, free. Leaving aside the question of whether freedom should be defined as 'doing what you want' this is clearly nonsense anyway. If Y is given the choice between staying and being hanged or going he may reasonably choose to go, but what he wants to do is stay in town, unhung, with his family alive and his farm intact. This he is not free to do, and it is because of X's threat (and Y's belief that X will carry it out) that his freedom is restricted.

Michael Taylor claims that pure negative freedom is not affected by threats being made, or even carried out (1), but he sustains this argument only by having a very strict definition of pure negative freedom according to which freedom is restricted only when an action is made impossible. He argues that sanctions such as disapproval or shame, even when carried out, do not render an action impossible, and so

"If the implementation of a threat does not necessarily make an individual unfree, the making the threat does not necessarily make an individual 'about to be' unfree." (2)

However, firstly I believe Taylor is mistaken to define even 'pure negative freedom' so strictly, and not admit that there can be degrees of freedom. Secondly he appears to consider the things that a person may do as isolated acts, so that if a person is still able, at whatever cost, to carry out a certain action then he is not unfree to do so; and if he is not unfree to carry out that one action then his freedom has not been restricted. For example, if someone

threatens to break my arm if I do not pay him £20 I would not, according to Taylor's account, be made unfree (or less free). I do not have to pay the £20. I can keep it, and have my arm broken. However, what I cannot do, if the threat is carried out, is have both my £20 and two healthy arms, and so I am not free to do this. And even if the person who threatens me does not really intend to implement the threat, I am still not able to keep my £20 and feel secure. Even if a strict definition of 'free' entails I am free to do one particular thing (keep my £20) it does not entail that my freedom has not been restricted at all, for the combination of two states that I desired would have been rendered impossible. Therefore to offer someone a restricted choice in place of an unrestricted (or less restricted) one is to diminish their freedom. When X offers Y the choice of leaving town or being hanged, or of paying £20 or having an arm broken X's power over Y, or to put it another way, X's power to restrict the range of options open to Y, restricts Y's freedom.

This would still be the case if, unknown to X, Y was planning to leave town anyway, and therefore leaves happily, for acting willingly is not the same as acting freely.(3) If what we desire coincides with the only course of action open to us we are lucky, perhaps, and may be happy, but this does not make us free. If it did then we would need only to learn to want to do whatever it is that we have to do in order to be free. If Y persuaded himself that he wanted to leave town anyway, or even if he really did want to leave, the power which X has over Y still diminishes his freedom, for X closes certain options to Y. Thus threats, which close options, decrease freedom, but offers do not. After an offer, perhaps of a new horse if he leaves town, Y can either stay, leave and take the horse, or leave and decline the offer of the horse. The offer has increased the possible course of action open to him and so has not decreased his freedom.

In all my examples so far, X and Y know each other, and in most of them, knowing that their wishes conflict, X uses his power directly to restrict Y's freedom. However the relationship between power and freedom is not limited to such a narrow range of cases. There are, as I have mentioned, situations in which individuals or groups who have mutually incompatible objectives struggle to achieve their ends, and thereby may frustrate the intentions of the others. These may be examples of one person (or group) restricting the freedom of others, even if the loser does not have to do anything except put up with being the loser, and even if the person who achieves his/her ends is unaware of the conflict of interests. For example, if X has the power to close a railway line or bus route through a village then he restricts the freedom of the people who would have travelled that way had they been able to, whether or not he is aware of their existence. They may form an action group to fight the line closure and lose, or they may recognise that they have no hope and either move to the town or become more isolated in their village. It is not their choice of action that determines whether X has power over their lives and is able to restrict their freedom: X may have that power whether or not there is overt conflict, whether or not his actions were intended to restrict the freedom of others, and even if X is not an individual but a group. As is suggested by Day in an interpretation of power somewhat broader than the traditional liberal one, X has power over Y not only if X can make Y do what he wants, but also if Y is dependent on X for the satisfaction of his desires and if X has power with respect to issues that affect Y's welfare.(4)

If, as I have claimed, restricting the range of options open to people restricts their freedom, then I can find no good reason to deny that the unintentional consequences of actions can restrict freedom also. If the

caretaker locks me in the library unintentionally, then I am just as locked in as if he had done it on purpose, and if my friends claim to value my freedom of movement, then I would expect them to take some steps to let me out. If they did not, on the grounds that I had been locked in unintentionally, I would suspect their concern for my freedom was not as great as they claimed. Similarly, if for example, despite having the legal freedom to vote, people were unable to use their vote because perhaps they could not afford the time off work or the fares to go to the polling station to vote, they suffer from obstructions in the way of their doing what they are legally entitled to do. If we think that the legal freedom to vote is important we must, to be consistent, also be concerned when this legal freedom is useless. Therefore, having passed a law to introduce full adult suffrage, if we see that social or economic circumstances, that we could alter still prevent people from voting, then we should alter them, and, in doing so, recognise that we are extending freedom. The question we need to answer in order to ascertain whether freedom is being restricted is not 'Did someone fix things that way?' but 'Seeing that there are obstructions to free choice, could we arrange things differently and remove the obstructions?' If the answer to the second question is 'yes' and individuals or groups choose not to alter arrangements then freedom is being restricted just as surely as if that were the intention.

In his essay on the two concepts of liberty Berlin sometimes seems to accept the traditional liberal view that freedom can only be restricted intentionally. He says

"Coercion implies the deliberate interference of other human beings within the area in which I could otherwise act. You lack political liberty or freedom only if you are prevented from attaining a goal by human beings" (5)

At other times, however, he inclines to the view that freedom is restricted if removable obstructions are not eliminated. He speaks, for example, of the phrases 'freedom from fear or want' and says they imply that these conditions

can be removed by human action even if they were not deliberately created by people who intend to restrict the freedom of others. Berlin does not minimise the importance of removing unintended restrictions on choice, even if he does not call them restrictions of freedom. He says

"Useless freedoms should be made useable, but they are not identical with the conditions indispensable for their utility. This is not merely a pedantic distinction, for if it is ignored, the meaning and value of freedom of choice is apt to be downgraded. In their zeal to create social and economic conditions in which alone freedom is of genuine value, men tend to forget freedom itself"(6)

However, this is just as likely to be true of legal freedom as of economic and social freedoms. Certainly, by itself, being able to afford to travel is not the same as being free to travel, but then neither, by itself, is being legally entitled to travel the same as being free to travel. To mistake legal entitlement for freedom is as much a mistake as is confusing freedom with wealth.

It is wrong to equate liberty with power, wealth or knowledge, and a mistake to confuse freedom with the conditions necessary for freedom. However, it does not follow from this that people are free regardless of how poor or ignorant they are, unless they are subject to intentional coercion. It may be true, as Hayek claims (7) that a rich courtier living in luxury could be less free than a poor farmer. What this example shows, however, is not that there is no connection between wealth and freedom, or that a society which distributed wealth more equally would not find freedom more equally distributed also, but only that wealth is not freedom, and not the only factor contributing to the enjoyment of freedom.

Like Berlin, Hayek points out that people may be freer under an autocrat than a democratic government, but he goes further and says

"It can scarcely be contended thatresident aliens in the U.S. or persons too young to be entitled to vote do not enjoy full personal liberty because they do not share in political liberty" (8)

It is true that voting does not ensure perfect freedom, nor

is voting or participation in government identical with freedom or all there is to freedom. Nevertheless, it certainly can be contended that a person who is not allowed to vote or stand for Parliament is less free, in that respect, than one who is. Perhaps, sometimes, the person who is not allowed to vote has so much freedom in other areas that we would conclude that on balance s/he is freer than another person who is allowed to take part in politics, but clearly s/he would be freer still if not debarred from joining in the political life of the country. Gardening is not freedom; nor is travelling, nor choosing a job or spouse, but a person who was not allowed to do any of those things could complain of a restriction of his or her liberty, and so could anyone who was not allowed to vote. Indeed, restrictions on voting or standing for election count as restrictions of freedom even under a narrow liberal definition of restrictions of freedom, for whether people are allowed to take part in political decisions or not is not a fact of life which drops fully formed from the sky, or even the unintended consequence of other actions: it is the result of a decision taken by the person or people already in power. While it is true that the lack of freedom to participate in government would not be felt as coercive by those who did not want to be involved in politics, this is the case with other restrictions of liberty as well. The person who never wants to drive above 30 mph, criticise the government of the day or march with a placard will not feel coerced by restrictions on speeding, free speech or demonstrations either, but they are restrictions of freedom nonetheless.

So far I have argued that we may have power to restrict the freedom of others even if we do not force them or threaten them to do what we wish, simply by the unintended consequences of actions which prevent them from attaining their objectives or restrict the range of options open to them. It might appear that if this is true we

would be unable to stir from our beds without restricting someone's freedom, for everything we do might have unforeseen results which would diminish someone's freedom of choice, and the concept of restricting freedom would be extended beyond any useful limit. However, firstly, it is not the case that in every instance of mutually incompatible objectives one person achieves his/her ends by restricting the freedom of the other. If they both want to win the same race or buy the same second-hand car, then the one who runs the faster or answers the newspaper advertisement the sooner has not used power to restrict the freedom of the other. They were both equally free to attempt to do what they wanted, but only one (either one) could actually do it. In many circumstances one person does use power to prevent another person getting what they both want, but when this is not the case neither one is under a moral obligation to let other people do whatever they want, any more than they have an obligation to let us have our way all the time.

Secondly, it is important to note that there is a difference between unforeseen and unintended consequences. If we do not know that our actions restrict the freedom of others we are in a different position morally than if we do know, but argue that restricting their freedom was not the purpose of our actions - just an unfortunate by-product. There is an argument on the subject of just and unjust actions that injustice cannot arise from acts that are themselves just. Speaking of distributive justice, Nozick says that

"whatever arises from a just situation by just steps is itself just." (9)

Although Nozick's main argument, that the result of a just entitlement passed on by just means must itself be just, seems obvious, it is a mistake to consider actions to be either just or unjust, right or wrong, without paying any regard to the consequences of the action. It is as if there were thought to be only two classes of actions; firstly the deliberately malicious, unjust or wrong ones, and secondly all the others which because they are not deliberately

malicious must be morally unexceptionable whatever their consequences. What seems to have been forgotten is that the consequence of the "same" act in different circumstances may be very different. An action cannot be considered good or bad, just or unjust, or restrictive of freedom or not, solely with reference to the actors and their intentions and disregarding the consequences for other people. The owner of a well or barn of grain who refuses to let others onto his land is not doing the same thing if i) they can use their own water or grain, or ii) they are dying of thirst and hunger. It makes no difference whether the owner of the land inherited it according to just principles from his father who bought it at a fair price, the consequences of his keeping everyone else away are such that they must be taken into account when a decision is made about the justice of his action.

It is the same with freedom. If the caretaker locks the library not knowing I am still in there, then I am not free to leave, and though I would not blame him I am no less locked in than if he had done it on purpose. However, if I then shout out of the window to him, I would not think he was justified in leaving me there all week-end on the grounds that my being locked in was the unintended consequence of a perfectly legal and morally unexceptionable act. I would feel that once the consequences had been pointed out to him he ought to come and let me out, and if he did not, his act would not be the same morally blameless one it was originally. Similarly, once we know that certain social arrangements leave some individuals and groups unable to do what they and our society deem to be valuable, and what they are legally entitled to do, we are not in the same state of innocence that we were once. It is not satisfactory for us to say "That is an unintended consequence of legal actions, and though it is a shame it cannot count as a restriction of freedom because we did not do it on purpose," and then carry on as before. We should either justify the restriction of their freedom or attempt to remove it.

Up to this point I have concentrated mainly on situations in which individuals or groups are prevented by human actions, intentional or otherwise, from doing what they want. However, as was said earlier, freedom is not simply doing what we want. The threatened farmer Y, I argued, would still have had his freedom restricted by X even if he had wanted to leave town anyway, because the range of actions he might have chosen to do had been restricted. We are unfree, I claimed, not only if we are prevented from doing what we want to but if other possible options are closed to us. It is possible, of course, that if we do not consider or attempt certain possible courses of action, we may be unaware that they are closed to us. Our freedom may have been restricted without our knowledge, and power exercised over us without any observable conflict of wants.

The belief that unless there is visible conflict, power over others is not being exercised is criticised by Lukes. (10) He argues that though power may only show up clearly where there is conflict, it does not follow that open conflict is necessarily present when one person or group exercises power over another. Firstly powerful people or groups may use their power to prevent certain issues coming to public notice and being discussed, and so avoid overt conflict. Secondly

"A may exercise power over B by getting him to do what he does not want to do, but he also exercises power over him by influencing, shaping or determining his very wants. Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have?" (11)

I believe it would be accepted widely that the extreme cases of determining another's wants - hypnotism and brainwashing - are exercises of power which diminish freedom. More subtle forms of manipulation, I would argue, are also exercises of power which restrict freedom, and differ only in that they are harder to observe.

To discover the existence of unexpressed grievances and unacknowledged desires is not easy. If we concentrate on what Y says he wants and what X does to prevent him achieving it, then it is usually quite straightforward to decide if X's power has restricted Y's freedom. But what are we to think if Y has never expressed his wants, or appears to have no wants of his own, or has always agreed and co-operated with X to achieve X's ends? If X has been successful in creating certain wants and preventing others from arising then this is exactly what we would expect, but it creates difficulties for those who try to interpret what a free Y would have wanted had it not been for the intervention of X. Is it, as has been suggested, arbitrary and biased (14) or an arrogant assumption of omniscience for an observer to say that Y's wishes are not his own, and that though he thinks he has embraced certain ends freely, the observer knows better and recognises that Y has been manipulated. Democrats and lovers of liberty are in a dilemma, for they place great importance on allowing people to choose how they shall live, but if those choices have been engineered, then to treat them as the true wishes of autonomous individuals is mistaken and merely supports the wishes and reinforces the power of the manipulators. On the other hand, to dismiss them as fabrications and compel people to do what the enlightened observers believe they would have wanted (though they have said they do not) is hardly democratic, and does not promote individual liberty.

In an attempt to clarify when power is used to restrict freedom, Lukes uses the notion of interests as opposed to expressed wants, and says that

"A exercises power over B when A affects B in a manner contrary to B's interests." (13)

I disagree with the idea that we exercise power over others only when we affect them adversely. If I snatch someone from the path of a lorry it is as much an exercise of power as if I pushed them into the road, but it is, in the latter instance, a justifiable exercise of power for the

benefit of the person coerced. In the same way a government exercises power over the population when it enacts and enforces legislation, whether or not this is in the interests of those affected. However, Lukes is right to make a distinction between wants and interests. We know our wants, like our pains and fears, better than anyone else, and though they may be foolish wants, or have been created in us by someone else, and though we may be persuaded to change our minds, still, if we say truthfully that we want something there should be no disputing that we do want it, even though we might be wiser not to. Interests are different. It is possible for us to be mistaken about our interests, to want what is not good for us and not want what is. It is clearly possible also that an observer, perhaps better informed or more experienced, may be able to judge our interests better than we can ourselves. However, a democrat would hesitate to claim the right to make people do what is in their interests ('true' interests, 'long-term' interests) on the grounds that their expressed wants may have been created in them. We have the problem that if our wants are manipulated we are not free, and if they are disregarded in our own interest then we are not free either.

According to Benton

"the radical critique is committed to the claim that the real interests, true needs etc. and the potential wants whose satisfaction they would be, are quite other than the wants and satisfaction which are currently experienced by the population."(14)

This is not so. There is no reason for us to suppose that the population is absolutely unaware of its interests or that the people's expressed desires are the complete opposite of what they would have been but for the influence of those in power over them. To say that wants have been created and interests misinterpreted is not to say that all wants must have been created and all interests wrongly perceived. If an individual or group in power is unconcerned with the health of the subject population and does not want them to upset

the status quo by pressing for improvements in health care, it does not have to persuade them to want to live diseased and die early. It could do a hundred things, from suppressing information about diseases to persuading people that the country could not afford a proper health service; from ensuring that the cost of safe practice in industry and agriculture was paid by the workers who could not afford it (by paying piece work rates, when safe working takes longer) to extolling the virtues of individual freedom and linking this with individual responsibility for health care. It would not have to reverse people's normal desire to live free from pain and disease. It is not necessary for the articulated wants to be "quite other" than the potential wants. Factual ignorance and a faulty perception of how to achieve basic wants may be quite enough to ensure the result desired by those in power.

The distinction between wants and interests, then, is of some help in the decision of what we should do if we want people to be free to make their own choices, for it is useful for corroborating the claim that wants have been created or prevented from arising by an exercise of power. If we see people, sometimes large groups of people, ostensibly wanting what is apparently not in their interests, we may not be able to prove that they have been manipulated, but we should consider the possibility. If we look at Y (who says he is content) and see that he is poor, badly-housed and overworked, we may deduce that he would not have wanted this if X had not persuaded him that it is good for his immortal soul, that it is unalterably his lot in life or that the alternatives would be much worse. We feel reasonably secure in assuming this because we believe that to be poor and overworked is not in his best interests, and we think we know that because we believe he has certain basic interests that he shares with us and everyone else.

Unless it is the case that we share certain interests with those from our own and other cultures, we could never know what was in anyone else's interests, and the claim that Y's wants would have been different but for X's power would be impossible to sustain. If we have no cross-cultural criteria for judging what is in someone's interests, then we would have no way of knowing that Y might have wanted anything different, and even less of knowing what it might have been. Our notions of what is in our interests are necessarily value dependent, but, I would argue, not entirely so. Though our wants and interests are not fixed and given (and if they were they could not be changed by another's power) there are some things all societies deem desirable and undesirable and often these coincide. No-one, for example, in normal circumstances, wants to starve or be in pain, nor is such suffering in their interests. To accept that we may be mistaken or misled about our interests, is not to believe that we are often misled about such basic shared interests as these.

Because Lukes' analysis of power goes beyond overt conflict and action as he attempts to deal with the problem of consent and consensus on the part of a subject individual or population, it has been criticised for being unfalsifiable supposition. It is mistaken, however, to assume that there are two kinds of power: one observable and obvious, and the other quite hidden and unavailable to empirical research. We may not be able to see the power of the manipulator as clearly as that of the dictator, but that does not mean we can see nothing at all. If it is accepted that people share certain important basic wants and interests, then any group which appears to be acting voluntarily against those interests could be investigated, and there are many signs an observer could look for in an attempt to discover why. Perhaps the people are working towards and even more important end and are prepared to give up their leisure, comfort to even their lives to achieve it: but perhaps they have been

illegitimately persuaded that the course of action they are taking is in their best interests. It would be necessary to discover who does seem to benefit, and whether they have at their disposal any possible methods of persuasion. If persuasive arguments had been used these could be examined critically, and the prevailing ideology could be examined to see what influence that exerted on the population. Once the possibility that those in power can create wants in less powerful individuals or groups has been admitted - and I do not see how it can be denied - then empiricists can find evidence for it if they are prepared to look.

I would not claim, however, that all forms of persuasion and influence are exercises of power that restrict freedom. If someone is persuaded to change his/her wishes by rational argument and for good reasons then this does not seem like an exercise of power or a restriction of freedom. If Y wanted to pursue a certain course of action but was persuaded by the facts and arguments presented by X that it would not be wise, then no freedom has been restricted. It was the facts and arguments which convinced Y and X was merely the instrument of their presentation. If, however, X is a smooth-tongued orator who uses his intellect as a weapon to defeat Y and 'talk him round', then I think it would be right to say that X's powers of persuasion restricted Y's freedom. A clear and truthful account does not restrict freedom because it informs the listener of the way things are and of what must be considered when choosing what to do, but a misleading, distorted or partial account which persuades the listener that certain options are closed when they are not does restrict freedom. Clearly this does not apply only at the individual level. The use of the press, television and radio by governments (or others) for propaganda purposes is also an exercise of power which restricts freedom, because it prevents people from making decisions about their actions and opinions in the light of the fullest possible knowledge. If people do not know what

is happening they are prevented from protesting about it or changing it as surely, and more effectively, than if protest demonstrations were banned. The lack of overt conflict between those in power and those kept in ignorance is a sign, not of agreement, but of restricted freedom.

I have argued that the traditional liberal interpretation of freedom is too narrow. It is not wrong in saying that freedom is the absence of restriction, or that it can be restricted only by human beings and not by natural laws, but its notion of human action is itself too narrow. Freedom may be restricted, I have claimed, not only by deliberate coercion, but also by the unintended consequences of individual action and inaction, and by the consequences of joint action and of social arrangements which are themselves not given, but the result of human choice and therefore capable of alteration. Our minds may be restricted as well as our bodies, and, as freedom involves the absence of restrictions on the satisfaction of potential as well as actual wants, it is possible for freedom to be restricted without our being aware of it and without obvious signs of conflict.

If freedom can be restricted by what we do and do not do, say and do not say and whether we mean to or not, then obviously restriction of freedom will be a more common occurrence than if it were brought about only by deliberate action. It might seem as if our entire lives were spent oppressing our fellow men and women. It should be remembered, however, that we do not have a moral obligation to remove every single removal obstruction to the fulfilment of everyone else's desires or possible desires. We are none of us entirely free, nor should we expect to be, and we do not have either 'freedom' or restriction but many different freedoms that we can enjoy to different extents. Some of these are much more valuable and important than others, and some are antisocial, undesirable, and ought to be

restricted, and I will be looking in later chapters at the questions of whether we have a right to freedom, and of what might justify restrictions of it. However, even though some restrictions are justified, and some freedoms undesirable, if our society valued freedom as much as it claims to, a wider interpretation of what counts as a restriction of freedom would not be resisted, and more vigorous efforts would be made to remove the restrictive circumstances of many people's lives.(15)

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12. For example, Benton Realism, power and objective interests. In Graham, Keith Contemporary political philosophy P.7
"Attempts to replace participants' characterisations seem necessarily to involve a degree of arbitrariness, value-bias and, consequently, contestability which threatens to undermine the claim to objectivity or scientificity on the part of the political analyst."
13. Lukes Op. Cit. P.27
14. Benton, Ted Op. Cit. P.14
15. As Marx said
"The kingdom of freedom actually begins only where drudgery, enforced by hardship and by external puposes ends...The shortening of the labour day is a pre-requisite."
Marx, Karl Capital 3/2 Ch 48 Section 3
It is not that a shorter working day guarantees freedom, nor that long hours were deliberately imposed to stop workers from choosing how to spend their time. The important points are firstly whether drudgery and hardship do have this effect and secondly whether this condition can be altered.

CHAPTER 4

CONSENTING TO THE RESTRICTION OF FREEDOM

Consenting to the restriction of freedom

"The ultimate *raison d'être* for the contract theory all through its history has been to reconcile the apparently conflicting claims of liberty and law. The demands of government could be explained and justified, it was thought, if they were based on the consent of the governed: people would freely obey a government they had themselves created and undertaken to obey" (1)

In the previous chapters I have claimed that, while we value freedom highly, not all freedoms are equally valuable and some are undesirable and ought to be restricted.

I said nothing, however, about who should decide which freedoms ought to be restricted and have the authority to restrict them. In this chapter I shall consider the claim that limitations of individual freedom are legitimate when people have agreed to accept them, and the idea that this agreement, expressed in the form of a covenant or contract, compensates people for their loss of freedom by securing for them other benefits in return.

The belief that the authority of the state is legitimated by a social contract has a long history, and Rousseau expresses its fundamental premise when he says

"since no man has any natural authority over his fellows and since force alone bestows no right, all legitimate authority among men must be based on covenants." (2)

I question the idea that legitimate rule is based on a social contract for two reasons. Firstly, as I shall argue, even if governments were instituted by contract this would not be sufficient to justify their rule, for more than agreement is required to make a contract fair. Secondly, it is unnecessary to postulate the existence of a contract or agreement to explain all our obligations, including obligations to governments or rulers, I claim, as we can have obligations other than contractual ones. If this is the case, the question which then has to be asked is whether obedience to the government is one of our obligations and the answer to this, I suggest depends on what the government

does rather than whether we have made a contract with it.

It is rarely if ever asserted that people have actually contracted to give up freedom in exchange for other benefits, and so the social contract on which our political obligation is supposedly based is said to be hypothetical rather than actual, or logical rather than chronological. However, apart from this difference (although it is, as I shall explain later, an important difference) there is no suggestion that the criteria by which we judge the fairness or legitimacy of actual and hypothetical contracts vary. A hypothetical contract to surrender freedom in exchange for security should be judged, then, like any real contract, on whether its terms were fair to both parties. (3) The terms of the agreement have to be considered because it is possible that through ignorance or foolishness or for some other reason people might enter a contract freely though its terms were unfair to them or made demands on them to which they had no right to accede. If this is sometimes the case with real contracts there seems to be no reason why hypothetical contracts should be any different. It will be accepted, then, that agreement alone is not sufficient to make a contract fair to both parties, (even though it may make it legal.) So a contract to give up freedom for security will be considered fair only if it is thought that freedom is something that can properly be signed away, and that the benefits given in return are a fair exchange. Agreement alone is not enough.

The belief that there are limits to the amount of freedom that may be exchanged for other benefits is to be found in theories of social contract as different as those of Rousseau and Hobbes. Rousseau said that there can be no contracting away of freedom because it is essential to humanity. (4) (Actually Rousseau believed that freedom is essential only for men, but he gave no satisfactory explanation of why the claim that "to renounce freedom is to

renounce one's humanity" (5) should not apply to women also.)

When Rousseau suggests that giving up freedom is something which may not be agreed in a contract, he implies that this would be unfair to those giving up their freedom, whatever was offered in exchange and however happily they agreed to the contract. Hobbes, who thought that people would be prepared to give up a great deal of freedom for the peace and security that could only come from submission to an absolute ruler, (6) also held that not all freedom could be given up in a contract. He thought that if we want peace we must have laws; if we have laws they must be enforced; and for laws to be enforced there must be one sovereign powerful enough to enforce them on everyone else. However, even Hobbes did not envisage people giving up all their freedom. He said they would be left with 'harmless liberties' - the freedom to act where there is no legislation, and 'true liberties' - the rights a subject cannot contract away to another, or the things he cannot, with justice, be obliged to do, (such as obey a command to kill himself, starve himself or confess to a crime, and allow himself to be assaulted without resisting.) (7) So if, as Rousseau and Hobbes both believed, some submission cannot be justified even by a contract, and not everything that is agreed is thereby just, then more than agreement must be necessary to justify the exchange of freedom for other benefits. Political obligation cannot be justified solely by reference to agreement or contracts: there must be also, at the very least, the belief that political obligation and some individual freedom are things which may legitimately be agreed by contract. Contract theorists do not tell us the basis of this belief, and could not attempt to do so without admitting that the fact that a contract has been made cannot, by itself, be the conclusion of an argument justifying giving up freedom.

Up to this point I have talked of the social contract as if it always involved people agreeing to exchange

some of their individual liberty for other benefits, and, indeed, this is what is usually proposed. However, not all contract theorists argue thus, and Locke pointed out the role that laws can have in safeguarding freedom as well as restricting it. Criticising Hobbes' claim that we can gain security only by submitting to an absolute ruler, Locke pointed out that this would be a bad bargain as it would be hardly likely to bring security, saying

"This is to think that Men are so foolish that they take care to avoid what Mischiefs may be done them by Pole Cats and Foxes, but are content, nay think it safety, to be devoured by Lions" (8)

Clearly this criticism is justified and part of Hobbes' mistake lies in placing freedom and security in direct opposition to each other. Locke was aware that laws can extend freedom as well as restrict it. Sometimes, it is true, he went too far in the direction of defining 'freedom' as desirable freedom, and of denying that necessary restrictions are restrictions at all. He called law

"not so much the limitation as the direction of a free and intelligent agent to his proper interest," (9)

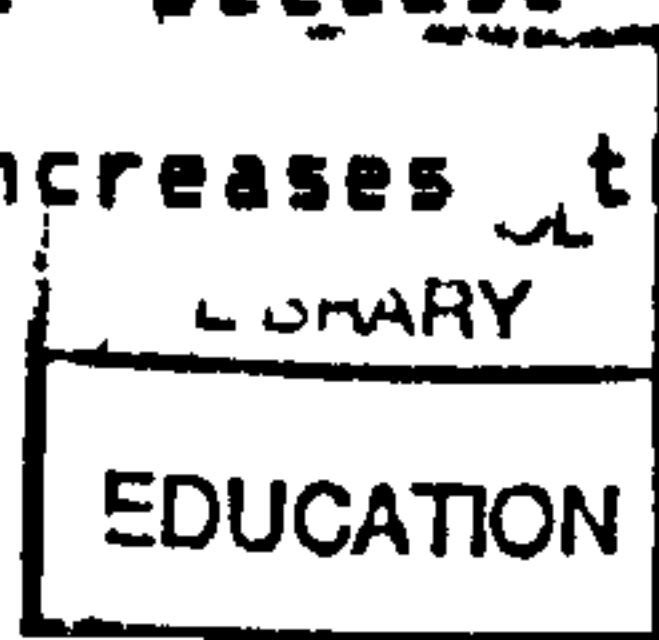
and believed that as the laws of government were based on the laws of reason they do not restrict liberty.

Redefining 'freedom' to mean only desirable freedom is a dangerous step along the road to confusing being free with doing what is right, and this can lead to the conclusion that people are free when forced to do the opposite of what they want, if what they are forced to do is right and what they want to do (or what they mistakenly think they want to do) is not. However, Locke does not go to these lengths and it is not necessary to do so in order to accept that law can enlarge freedom as well as restrict it, for while all laws restrict some freedoms they may also guarantee others. If X's freedom to demand protection money from Y is restricted, Y's freedom to do what he chooses with his own money is increased. Locke was aware that there is not one thing - freedom - which is either restricted and becomes less or is not restricted and becomes greater; is either given up

for security or is retained in insecurity. There are many freedoms, some of which are necessary for security and some of which conflict with other freedoms. The restriction of one freedom may allow the greater exercise of another.

The belief that a social contract involves exchanging liberty for other goods with which it conflicts is dismissed by Rawls also, though for different reasons than those suggested by Locke. In "A Theory of Justice" he puts forward the idea that people choosing the rules of justice for their society, but unaware of what their place in it would be, would give priority to liberty rather than to any other goods.(10) What Rawls means by giving liberty priority is that it may not be exchanged for any other social or economic goods, and that utilitarian ideas such as the public good or the happiness of the greatest number cannot be put on the scales and weighed against individual liberty. (11) The reason he gives for saying that people in what he calls the 'original position' would choose to give liberty this priority is that they recognise that freedom is necessary for us to carry out our life plans, whatever they are, and that it is therefore too valuable to risk losing it for ever or distributing it unequally.

The principle that liberty may be restricted only for the sake of liberty is meant to be of use in resolving the conflicts that arise in real life, but when we try to give it practical application we become aware of the difficulties involved. Firstly it rules out the possibility of restricting freedom on the grounds that it causes harm, suffering or injustice. Of course it is possible always to restate the ill-effects of these harmful freedoms in terms of liberty, so that a restriction on, say, theft or trespass can be justified because it increases the liberty of others to use their property as they wish, and a restriction on assault is justified, not because it prevents pain and fear, but only because it increases the freedom of the population



to go freely about their business. However once we start to redefine all our values in terms of liberty then the principle that liberty can be restricted only for the sake of liberty becomes empty and useless. If every good is reduced to liberty and liberty becomes the only good, then the possibility of restricting it for other goods does not apply. What we need, when freedoms conflict, are principles which will guide us in our decisions of which freedoms should be restricted and which encouraged, and we do not choose between them as Rawls suggests we should, by seeing which freedom is the greater, but which is the more worthwhile. Otherwise, we might argue that removing the restrictions on theft would be justified because so doing would result in an increase in the liberty of all to use what, at the moment, belongs to a few.

As an example of liberty restricted for the sake of greater liberty, Rawls cites the rules of debate which give people greater freedom to put their points of view because they limit the freedom of others to interrupt. (12) However, as Hart says, it is

"misleading to describe even the resolution of the conflicting liberties in this very simple case as yielding a 'greater' or 'stronger' total system of liberty, for these values suggest that no values other than liberty and dimensions of it like extent, size or strength are involved. Plainly what such rules of debate help to secure is not a greater or more extensive liberty, but a liberty which is more valuable for any rational person than the activity forbidden by the rules." (13)

To decide which liberties should be permitted or why the liberty to punch or steal should be restricted we have to use some criterion other than the priority of liberty. We refer to other values: we look beyond liberty and its extent and consider the use to which it is put. To acknowledge that some freedoms are undesirable and others unimportant may seem to show a dangerously low valuation of freedom, reducing it to mere means rather than an end in itself. However, as Raphael puts it

"The fact that something is a means to an end and not an end in itself does not make it of comparatively small importance. If it is a necessary means to a vital value, then it is itself vital." (14)

I would suggest that the important freedoms that we value highly are more easily defended if they are distinguished from trivial freedoms, and not encompassed in one indivisible whole called 'Freedom'.

I will turn now to what I said was the second basic assumption about a contract to restrict liberty and justify political obligations: that agreement to be ruled is necessary for the rule to be legitimate, and the accompanying belief that we have consented to be ruled. Of course, if contract theorists wish only to set out the conditions under which they claim rule would be legitimate they do not need to show that there has ever been consent. They could, like Rousseau, say what they believed would constitute legitimate rule and say that this is rarely, if ever, found. However problems arise for those who wish to say both that consent is necessary for legitimate rule and that their present rulers are legitimate. They try to get round the difficulty by looking for signs of consent other than the ones normally accepted for agreement to a real contract, and they claim to find them in tacit compliance, non-rebellion and acceptance of benefits from the state.

This presents a clear inconsistency in liberal social contract theory. It is claimed that agreement to the contract is like a promise, committing the individual because it has been undertaken freely. However, for a contract to be agreed freely there must be the possibility of not promising or contracting, and in the particular case of political obligation it would follow that those who withheld their consent to the contract could not be bound by it to obey the laws of the state. To overcome this problem the idea of consent is watered down, but in the process it must lose its justificatory power. If everybody is assumed to have consented by not emigrating or by an act such as not rebelling or using the highway (even if they do not realise that these actions will be taken as showing consent) then

giving consent ceases to be the rational act of free individuals who could withhold their consent if they wished. We may conclude either that obligation to obey the laws of the state exists only when undertaken freely (and therefore it has only rarely been justified) or that if we have obligations to the state these must be based on something other than free consent.

Not all contract theorists claim that the justice of laws depends solely on the fact that they have been accepted or agreed by those who are subject to them, but insofar as they do not believe this they are less than contract theorists. Locke, for example, did not think that the contract preceded social obligation, for he believed that in the state of nature people were already bound by the law of nature or reason on which the laws of the state were then based. Thus he differentiated between society (which was natural) and the state (which was formed as the result of a contract) rather than between an aggregate of lawless individuals and a law-governed society. Locke's contract, then, is not taken to be the basis of an individual's obligations to his fellows: rather it is the means by which society is kept running smoothly and securely, disputes are settled and punishments meted out impartially. I would argue that for Locke the social contract is unnecessary as an explanatory device. If people who already acknowledge obligations to each other and are aware that society would be safer, more just and more orderly if they co-operated with each other, gave up some of their freedom and submitted to the same laws, then a social contract cannot be the basis of their obligations. These will exist regardless of whether a promise is made or not.

In most theories of social contract it is held that individuals' willingness to keep contracts which restrict their freedom is based on both moral and prudential grounds. If people are rational as well as self-interested, it is

argued, they will accept limits on their freedom as long as everyone else does the same so that they can all enjoy the benefits of additional security. Once the contract has been agreed then, it is held, they are morally bound by their promises. However, one of the persisting criticisms of contract theory has been that promise-keeping is understandable only in the context of a moral community, and it is not something that a totally independent self-interested, pre-social individual could either comprehend or take part in. In order to promise it is necessary to acknowledge moral obligations, and a person who was a stranger to the idea of being morally obliged to act in certain ways for the benefit of others would neither understand nor accept that promises ought to be kept for anything other than prudential reasons. If the obligation to keep promises is not accepted, then although people might keep contracts for prudential reasons, they would break them as soon as it suited them to do so, and, therefore, would give up no freedom. If they were forced to keep the contract then the legitimacy that is thought to pertain to the laws of the state because of the free agreement of the governed would exist no longer because the government would then be ruling by force.

The argument about promise-keeping is one aspect of a wider criticism of contract theory I wish to make, which is that it is based on what Wolff calls

"the classical liberal mistake of conceiving the relationship among men as purely instrumental or accidental rather than as intrinsic and essential" (15)

As Wolff says,

"Classical liberalism... portrays society as an aggregation of Robinson Crusoes who have left their islands of private value merely for the instrumental benefit of increasing their enjoyment through mutually beneficial exchange" (16)

I believe that the idea of free individuals making a contract to limit freedom presupposes this 'liberal' view of individuals and their relationship to society. The social contract is, as is always stressed, a logical construct and not an historic event, and contract theorists do not need to

show that any such contract has ever been agreed before they can make use of the concept. Nevertheless, as it is a construct which is intended to help explain an aspect of the relationship between individuals and society (looking, as it does, for the basis of political obligation) it may still be criticised for its assumption that the free individual is logically prior to society. Contract theorists may not believe that there ever existed an individual, recognisably human but totally free and independent of society, but their way of talking as if this were so means that we are led to look at the questions surrounding freedom and obligation from one perspective. Whether we consider Hobbes who preferred "any subjection whatsoever" to what he saw as the only alternative "civil war and the right of the sword" (17), or Rawls who believes that liberty should have priority over all other social and economic goods, we start with individuals and their freedom and then move to the justification of their obligations. We are shown individuals who have freedom before they have obligations and who then choose to give up some of that freedom for something else they want more. This is a mistaken view of human nature and human freedom.

Human beings are essentially social beings, and not just individuals who sometimes choose to leave their isolation, and so human freedom is neither logically nor temporally prior to social obligation, and our obligations are as natural as our freedom. Despite agreeing with many of the criticisms of liberal social contract theory which Pateman makes, I disagree with her claim that

"free and equal individuals can justifiably have obligations if and only if they have taken them upon themselves" (18)

This entails that a person who chooses to accept no obligations has none, and if all obligations are voluntary then it follows that political and social obligations, or obligations relating to our role as parents or children, may be accepted or rejected by individuals regardless of the effect this has on the other members of society.

Obligations, I would argue, are inescapable rather than voluntary. It is only recently that people have had much choice as to whether they became parents or not, and if we have only the obligations we have voluntarily chosen, then parents in past ages would have had no obligation to look after their children. Similarly, no-one could be said to have an obligation to try to save a friend's life, or even treat their fellows with common honesty in their dealings, unless they had chosen to do so. The standards for all our other-regarding behaviour would be a matter for our own individual choice, and we could not be criticised for anything except failing to carry out what we had agreed to do. The obligations of parents to their children, or, I would argue, of members of a society to their fellow-members, are not simply a matter of individual choice. It is true that Pateman distinguishes between obligations and 'things we ought to do' which have not necessarily been freely accepted, but I do not find this distinction useful. If there are things which we ought to do even if we have not undertaken them freely, then we are morally obliged to do them, and so they are obligations. Freely agreed obligations (like agreeing to obey the rules of a club when we join it) form a small section of a much larger range of obligations which exist whether we choose them or not. Society is not a club that we can choose not to join.

To argue that obligations are inevitable and that the 'obligationless' individual does not exist, is not, as Pateman suggests, to treat political obligation as unproblematical. The question "Why should I obey the government?" must still be asked, but it will be asked by social beings who are aware of having obligations to the other members of their society and wonder whether obedience to the government is part of them, and not by isolated individuals wondering whether it would suit them to give up their total freedom and commit themselves to some voluntary obligations. The obligation to obey the government, if and

when it exists, is not based on a promise, explicit or tacit, to the rulers, but exists because participation in a just, law-governed society provides the way of carrying out our obligations to our fellow citizens, while engaging in a free-for-all does not.

However, if our political obligation is based on our obligations to the fellow members of our society rather than to the rulers, it follows that our obedience is contingent upon the rulers pursuing the welfare of our society. Our awareness of our obligations to our fellows will not always make us compliant and may lead us to realise that we ought to oppose the government, try to bring it down, or even to disobey its laws. We are not bound to unquestioning obedience to a government or other ruling authority simply because we recognise that we have obligations come what may, whether we choose them and whether we make a contract or not. To accept this entails acceptance of the idea that we cannot abdicate our wider social responsibilities and leave everything to the government, and a complete rejection of Hobbes' belief that laws are "the measure of good and evil actions". (19) I suggest it entails also that we have the obligation to participate in the organisation of a just society, and I will look at the relationship between democratic participation and freedom in the next chapter.

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CHAPTER 5

DEMOCRACY AND LIBERTY

Democracy and Liberty

In the last chapter I argued that we cannot explain political obligation or justify the restriction of our liberty by saying that we have a contract with our rulers in which we consent to be ruled. I examined the claim that any de facto government, whether monarchy, aristocracy or democracy, is legitimate if it has the consent of the governed, and argued that we cannot be said to have given our free consent unless we have open to us a genuine possibility of refusing to give it, for we do not give consent simply by not emigrating or not rebelling. I claimed also that even if we had contracted to give up our freedom, this did not necessarily justify the subsequent restriction, as agreement alone is not sufficient to make a contract just; nor is agreement a necessary pre-condition of the legitimacy of an obligation, as we have many obligations that we have not chosen. My conclusion, then, was that political obligation is not based on a contract, even a hypothetical one, with our rulers, and it does not necessarily require our consent. However, I did not argue that obligation to the government is one of our non-contractual social obligations and that we are morally obliged to obey any and every government; only that obedience to the laws of the state may be a way of fulfilling our natural and inescapable obligations to the other members of our society.

It is sometimes argued, however, that though people do not give their consent to many forms of government, a democracy is different because the democratic election of a government is analogous to the voluntary agreement of a contract. As consent in a democracy is expressed positively through the ballot box (rather than tacitly through lack of protest) and as an alternative is available, then, it is said, the obligation citizens owe to a democratically elected

government is based on consent in a way that is not true in other political systems. This is not the case, however. In a democracy people who do not vote are still held to be subject to the country's laws, as are those who vote for losing candidates or parties, and while those who vote for losers might be said to have shown their consent to the system by taking part in it, this does not apply to the non-voters. The alternative that is said to be on offer is only an alternative within a prescribed framework, and there is no opportunity for people to give or refuse to give consent to the whole system. They have some choices, it is true, but not the choice of either consenting to obey the laws and give up some freedom or not, and so the claim that our obligations to the state cannot be based on a contract is as true of democracies as of any other political system. If we have an obligation to obey a democratically elected government this is not because we have agreed to do so, or have chosen it freely.

If this is the case then the question arises of what the relationship is between democracy and liberty and whether they are essentially connected. It was argued in Chapter 3 that, contrary to Hayek's claim, there is some correlation between democracy and liberty, for people who are not allowed to exercise the democratic rights of voting, standing for election and opposing the government lack certain freedoms, regardless of whether a benevolent despot turns a blind eye to all their other activities. However, it must be asked whether this is all there is to the relationship. Other things being equal, are the citizens of a democracy more free than their counterparts in other political systems only because they have open to them the chance of choosing their leaders and replacing them when they become unpopular, or is there a more intimate relationship between democracy and freedom based on the idea that in a democracy we are obeying the laws we have made for ourselves, and so our freedom is not restricted?

Though we may as individuals sometimes choose to do something that restricts our future freedom, still, at the moment we make our choice I think it would be generally accepted that we are exercising our freedom. We may choose to enter a strict monastic order, or enrol for an Open University course, and from then on our freedom will be less than it otherwise would have been. Yet if those future restrictions were known at the time we took our vows or filled in our application forms, and were accepted freely, then when we have to get up at the crack of dawn to pray or watch television we are obeying the law we made for ourselves and are, in that respect, free in a way we would not be if some-one else had made us enter the monastery or the O.U., or even had added the requirement of early rising after we had joined. However, there is a problem in transferring Kant's maxim from the autonomous individual to the democratic society, and in saying that when 'we' obey laws which 'we' have made, 'we' are still free, because the 'we' who do the obeying and the 'we' who make the laws are often not the same people. If we are able successfully to influence the outcome of discussions of public policy, then we will have made laws for ourselves, and could claim to be free when following them. However, democrats who are unsuccessful in getting their ideas to prevail still have to abide by rules they have not made for themselves and may not agree with, and therefore have their freedom restricted. Unless we follow Rousseau, postulate an idealised general will and say that true freedom comes from following it even when it goes against our individual will, then it must be admitted that the rules and requirements of a democratic government will restrict our freedom.

I have argued that we are not individuals who can opt out of society if we choose, but that we are essentially social beings with certain non-contractual obligations to other members of our society, which arise not

from our individual choice and are not simply the obligations that one individual may have towards other individuals. That there are differences between types of obligations is clear. My obligation to give a friend a lift to the station when I have said I would do so is different from my obligation to look after my child, and both are different from my obligation to oppose an unjust government. The first is voluntarily agreed between individuals, the second is similarly the obligation of one individual to another, but not voluntarily agreed, while the third, also not voluntary, is an obligation towards all other members of the society, known or unknown. However, unless we accept the existence of the third type of obligation we could not have the first. For there to be voluntary contractual obligations between individuals there must be at least one general non-voluntary obligation we owe to other people - that of honouring the obligations we have undertaken voluntarily.

We have non-contractual obligations to other members of our society, then, and I would argue that one of them is to co-operate in and contribute to the organisation and running of a just society. Without suggesting that only people living in parliamentary democracies attempt to carry out this obligation, I do claim that it can be discharged most fully in a democratic society and that a truly just society would be democratic. In a just society people would neither be in the power of others nor have power to use others, the welfare and interests of all would be of equal concern and basic human rights would be protected. To this end power would have to be distributed equally so that people could have control of the decisions and circumstances of their own lives, and there would have to be the opportunity for people to represent their interests and put forward their views. The parallel with democracy is obvious, as is the extent to which present democracies fall short of the ideal. All human societies always will, of course. The ideal type is unachievable in reality, but the fact that a

society cannot be fully democratic or just does not remove from us the obligation to make it more so.

If we are to discharge our obligation to participate and make our own contribution in the joint enterprise it will be necessary for us to be able to oppose what we believe to be wrong, dissent from some decisions and put forward individual and minority views. Unless we interpret 'co-operate' and 'contribute' to mean keep quiet and do as we are told, we must have these freedoms in order to fulfil our obligations. In addition we must have knowledge. People cannot be involved in the making of decisions if they are uninformed and so we must have accurate and relevant information on which to base our opinions and be able to hear a variety of views, otherwise our contribution will be of little value. It is part of Mill's classic defence of free speech, of course, that people need to hear all sides of the question before they can make up their minds.(1) I am not as confident as Mill that truth will always win the battle with falsehood and error, but clearly it cannot do so if it is not heard, and so if information is suppressed or distorted then people will not be able to come to a proper decision. Therefore a democracy will need a minimum of secrecy on the part of government, and a press that it is not simply free from government control, but is critical and does not represent a narrow viewpoint or sectional interest. There will have to be some restriction of individual freedom in a democratic society, as there always must be when people live together, because we cannot all be free to do just as we wish. However, if it is accepted that all have a contribution to make and an obligation to participate, then it will be necessary for many individual freedoms to be guaranteed also in order that we can carry out our obligation.

These freedoms are not just important freedoms that happen to appeal to democrats, then, or that can be

successfully demanded by those who elect their leaders: they are essential for the existence of democracy, and essential for us to fulfil our obligation to our fellows to promote a just society. The relationship between democracy and freedom is not that democracy will give us or guarantee freedom, but that without certain personal liberties we cannot have democracy. Without education and information we could not take part in joint decisions, and without the right to criticise, dissent, protest, join with those who agree with us and seek to persuade those who do not we could not contribute our view of what our society should be like, or ensure that our interests would be considered. It will be apparent that in saying this I am using a wider interpretation of 'democracy' than is often used today and saying that democracy involves much more than voting for leaders who will do our thinking for us, more even than holding referenda on important issues and then abiding by majority decisions. Democracy involves participation in the joint enterprise of promoting a just society, and a society that did not give serious consideration to the views of all its members would not be a just one.

Although there is general agreement in our society about the value of democracy, this apparent consensus is not evidence of a deeper consensus of values and beliefs about the role of the individual in society and the relationship of the individual to the sources of power. The defining characteristic of democracy is generally taken to be that citizens are involved in political decision making, but some democratic theorists, such as Schumpeter (2) accept, or even recommend, that this involvement should be minimal and restricted to the choice of leaders. Schumpeter claims that in the classical theory of democracy it was believed that people held views on policies and elected representatives to get them carried out. His theory reverses this and makes it the primary function of the citizens to elect leaders whose job it is to produce the policies. Leaving aside the

question of whether there ever was a coherent classical theory such as he describes (3) I shall consider what Schumpeter's view says or implies about liberty and its relationship with democracy.

According to Schumpeter

"the principle of democracy merely means....that the reins of government should be handed to those who command more support than do any of the competing individuals or teams"(4)

If this is the case, then, as I suggested earlier the relationship between democracy and liberty would be simply that citizens of a democracy had a few more (or perhaps just a few different) choices that they could make. All citizens would be free in theory, and a few in practice, to stand in open competition for positions of power; all would have the chance to vote for an individual or team (though not necessarily one that represented their point of view) and all could try to vote out an unpopular government, but inbetween elections they would have very little to do but stand back and let the government get on with it. They would have neither an effective method of making their views known, (Schumpeter is not enthusiastic about petitions and letters to rulers because these may distort their judgment) nor the necessary information available on which to make up their own minds about issues. They would be (or should I say 'we are'?) as Rousseau said, free once every four years(5), but Schumpeter would not view this as a disadvantage as, for him, democracy is not basically about freedom to make the decisions that affect our lives, but about getting power and choosing who will be in power.

It should be noted that Schumpeter's theory of democracy is not purely descriptive. When purporting to give the advantages of his theory he also cites what he perceives as advantages of the system he describes, one of which is that it does not require much citizen involvement. Clearly, whether this is an advantage or not is arguable, but what cannot be disputed is that if citizens are not involved in

the making of political decisions, then the gulf between the 'we' who make the rules and the 'we' who obey them is widened. The idea that democracy should be, in some way, government by the people as well as of and for them is lost, and the vast majority of people will have to abide by rules they not made and over which they have exercised no influence or control.

Schumpeter's opinion is that the system he describes is an improvement on other systems in which the mass of the population is more directly involved, but this seems unlikely if the system and the people involved - the prospective leaders and the masses - are as he describes them. The former simply want power for no ostensible reason except to have power, and the latter are apathetic, ignorant and have totalitarian tendencies. Yet it is on them, the masses, that the responsibility rests for selecting the good leaders who are needed, and for preventing any misuse of power or moves towards totalitarianism. It is highly questionable whether a political system in which the majority of the population is involved only during periodic elections would be a better guard against would-be dictators than a system in which people were more involved and expected to consider political issues for themselves. So the advantage of forestalling dictators, which Schumpeter claims for his system, though undoubtably desirable, turns out to be an advantage only over systems with less popular involvement, not those with more.

If the bulwark against tyranny - the masses - are supposedly incapable of considering political issues, then those who want to be leaders have no need to consider them either for, according to Schumpeter, they are interested only in being in power. In Schumpeter's system our freedom to be involved in the making of decisions that affect us is traded off for a supposed increase in efficiency but if, as he assumes, love of power for its own sake is the only motive of all politicians, then he should tell us why he thinks

this 'democracy' will throw up good leaders. He does not explain why a system in which knowledgeable (though power-hungry) leaders periodically have to defer to and please the ignorant masses would produce a system which is more efficient than one in which the people are more directly involved; nor does he consider that anyone might want power in order to achieve certain ends rather than just to have power. If his analysis were correct then belonging to any but the largest party would be irrational, because it is the largest party that has the best chance of getting to power. Anyone wanting to be a leader would support it as the best way of getting themselves into power, the other parties would fade away, and the competition for power would be between individuals within one party as happens in totalitarian states. Clearly, even representative parliamentary democracy could not continue without people who are prepared to support a minority party that has no realistic expectation of taking power, but has policies which they believe to be in their own interests or even that they believe to be right.

Schumpeter, however, regards political policies - the plans of how our society will be organised - as little more than advertising slogans. Comparing politics to war he says

"the first and foremost aim of each political party is to prevail over the others in order to get into power or stay in it...the decision of the political issues is, from the standpoint of the politician not the end but only the material of parliamentary activity" (6)

However, Schumpeter's theory is unable to account for the grounds on which the electorate makes its choice of leaders. Even if all the would-be leaders do is dangle policies like baubles before the apathetic masses, the electorate would still be influenced by the perceived advantages of one policy over another, or what would be the point of offering any policies at all? Again, if the candidates for leadership do not believe in the policies themselves why would they choose any one policy rather than another except in the belief that it would be electorally popular? Try as he might - and he

does try - Schumpeter cannot make a coherent theory of democracy that dispenses entirely with citizen involvement in policy making or policy selection and reduces it to no more than the choice of leaders, for the choice of leaders is inevitably influenced by perceptions of what they will do when elected.

The disadvantage for the ordinary citizen of a system in which their involvement is confined to the election of others (whether they are called leaders or representatives) or to voting in a referendum is described by Lucas. He says

"A vote is a poor substitute for a voice...It is not enough to be able occasionally to answer questions when we are asked them; we want sometimes to be able to pose questions, put forward proposals. What is important is not only the possession of the vote but the opportunity of taking the initiative." (7)

It is the desire for a voice that has always been the motive force behind demands for democracy. Though Schumpeter may use the word 'democracy' for the selection of leaders who will make decisions for us, choosing leaders is not self-determination, and it was the desire for this as much as the wish to choose leaders that prompts people to demand democracy. Early democrats believed that when decisions and rules were made that affected their lives, then justice required that they should have some say in their making. That has not changed. In any large group it will not be possible to satisfy all and make the rules and decisions exactly as any individual might wish, because there will be others who have different views and interests who will be affected too. However, when decisions which may affect us as individuals or members of the community are being made the democratic desire is to be able to influence them by contributing our experience and opinions.

To argue thus is to view democratic participation as a right, whereas I have spoken of it as an obligation. In fact it is both. We participate as individuals in order to protect our own interests, have charge of our own lives and concerns and avoid being in the power of others; but we are

not simply individuals with individual interests and so we participate in joint decisions in order to make our contribution to the task of organising a just society. Although democratic participation is an obligation, the first demands for it came from those who had suffered the injustice of coercion by a powerful government over which they had no control. They had been told their duty was not to participate but to obey and in such circumstances it is not surprising if democracy is demanded as a right rather than accepted as an obligation. The Levellers, for example, claimed the right to be involved in the formation of the laws that affected their lives on the grounds that it was not only the propertied classes who had a stake in the running of the country and should govern it. As Colonel Rainborough said in the Putney Debates

"the poorest he that is in England hath a life to live, as the greatest he". (8)

He expressed the demand largely in terms of the view I criticised in Chapter 4 - that each man should have to obey the government only if he had first given consent to do so, (9), but the basic claim was that as each man has his own life to live, justice demands that he should not be managed or used (and, I would say, or manipulated) by others with power over him.

Of course the decisions which affect and regulate our lives and may restrict our freedom and self-determination are made not only by central governments, and so it is not only governments which need to be democratic. Rules impinge on people at many different levels and through different organisations, which may themselves be democratic, allowing their members to participate in the making of decisions that affect their lives and the formulation of the rules that govern their behaviour. A democratic society would not only have regular parliamentary and local elections but arrangements so that people at work, the tennis club, tenants' association, Trade Union, school and home would be able to participate in making the decisions that affect their lives.

It might be questioned whether most people want to participate actively in the making of decisions, and suggested that those who do not are showing admirable common-sense in not wishing to involve themselves in a life of endless debates and meetings. The present apathy of voters in national and local elections could be cited as evidence of this desire to be left in peace to get on with the important things of life and avoid politics. I have not suggested, however, that people should be forced to participate in formal democratic structures, even though I have said they ought to do so. The unavoidable obligations which I have contrasted with contractual, voluntary ones are unavoidable only in the sense that we do not choose whether they exist or not, but we are still free to choose whether we carry them out, as we are free to make other moral decisions. Nor have I suggested that democratic participation is the only or even the most important obligation we have: there may be times when we have other more pressing ones that we have to put first. If it were generally recognised, however, that we have an obligation to involve ourselves with matters of common concern, we would bring up our children to value participation, we would welcome any moves towards it, try in so many different ways to facilitate and encourage it, and, without spending all our lives moving from committee meeting to rally, the level of participation generally would be increased. Even if people are uninterested in national politics they are much less so about things that affect them more immediately, and the reaction to, say, the closure of a local school or post office is anything but apathetic. People are less likely to be apathetic if they have a realistic chance of influencing events, if the issue is important to them and if they have been socialised or educated to fulfil their obligation to contribute to the running of society. It may be that those who take little interest in politics at present have realised that scant notice is taken of their views anyway and would have a different attitude if they thought their opinion would

be given serious consideration. Perhaps they have perceived the current situation more accurately than those of us who attempt to influence governments, and their apathy is a rational reaction to the present distribution of power rather than an inevitable fact of life. It should not be assumed that mass apathy is inevitable.

When we are able to participate in the making of decisions that affect our lives we can express our opinions about what should be done, represent our interests and limit the power that others can exercise over us. However, there will still be occasions when we will not get our way and will have our freedom of choice and our freedom of action restricted. If, after all our participation and influence, we are still in the minority, and our opposition and dissent are unavailing, then we cannot be said to have made the laws that we are expected to obey. If we are not successful in getting our own way, despite having the opportunity to put our point of view, then our freedom will have been restricted and we will want to know if we have an obligation to obey a government which we did not choose and with which we disagree.

The first point to make is that the object of democratic participation is not to enable individuals to get their own way, but to make joint decisions that reflect the common interest where it exists, and reconcile individual interests where possible. In any democratic group the contribution of all its members should be valued, and the final decisions will owe something to each contributor, even those whose views did not prevail and who disagree with the conclusions. Thus the disappointed democrat who participated in a open discussion will have contributed something to the final decision, even if the result was not quite as s/he would have liked. Unless the society is one in which certain individuals or groups constantly find themselves in a minority, the individual's freedom to influence joint decisions will be greater than in an undemocratic society, and even

when the conclusion does not satisfy all there should be greater understanding of why it was reached. However, after all that can be said about greater freedom to influence decisions, and greater understanding of disagreeable conclusions, the question still remains of whether we have an obligation to obey a democratic government when we disagree with it or believe it to be wrong, and the answer to this question, I claim, depends on what the government does.

It will be argued that if we reserve the right to decide when we should obey the government according to whether we approve of what it does we will have a chaotic society, or rather no society at all, but an aggregate of the isolated individualists of the liberal theory I have criticised. This is not the case, however, because there is an important difference between individualists choosing their obligations, and autonomous moral agents attempting to determine what their obligations to their fellows are and whether they can be fulfilled best by compliance with or opposition to government commands. Our obligations, like those of the government, are to the other people who make up our society. Sometimes, indeed often, we will carry out our obligations best by obeying the laws of the government of the day, but at other times we do it by opposing the government or even occasionally by disobeying its laws.

There is no reason to suppose that a society composed of autonomous moral agents would be chaotic, though it might not be as easy to rule as one made up of tractable, obedient citizens. Firstly, those who acknowledge the obligation to promote a just society will admit a prima facie obligation to obey the law, for without law the attempt to promote a just society would fail. Secondly, if the society is fully democratic there will be an additional imperative to respect the law, for the government will have facilitated discussion, listened to dissent and allowed protest, and so the final decision ought to represent the

considered wishes of the majority. The majority is not always right, of course, and people are not always aware of what is in their best interests, but if one criterion of a just society is that it is organised for the benefit of all its members, then the fact that something is desired by the majority of them indicates it should be considered very seriously. Thirdly, it should be remembered that we reserve the right to disobey the law only when by obeying it we would fail to carry out our obligations to others. This is very different from saying we can do it when we feel like it, or find ourselves in a minority. Often we may be required to do something we would rather not do, and have not chosen or agreed to do, but unless our objections are that to obey the law would prevent us from fulfilling our responsibility to others, we should not break it.

As has been said there is a *prima facie* obligation to obey the law, and so even when faced what appears to be an unjust law, the person committed to promoting a just, democratic society would not consider the question of whether to break it in isolation, without regard to wider consequences, such as diminishing respect for the law in our society. For example, if we know that some of our taxes will be used to make nuclear arms and we believe that this is contrary to our obligations, we might decide that we ought to withhold some of our tax bill. However, there are more issues involved than simply the one of whether we should contribute to the building of nuclear weapons. The possibility of setting a precedent for others who did not want to contribute to the provision of schools or hospitals should be considered, as should be the fact of whether or not a majority of fellow citizens wanted to build the weapons. Another consideration would be, of course, the consequences of breaking the law. Although we might hope, through our action, to draw attention to the fact that the particular law we had broken was unjust and should be changed, even a democratic government that was most sensitive to the wishes and needs of the people, would enforce the

law as it stood, until the case for changing it had been accepted. Breaking the law is sometimes right, but, like other moral obligations, it cannot be done at no cost to ourselves.

The consideration of a wide range of factors rather than one simple question is part of what is involved in exercising moral autonomy, and we do not concede this right when we accord to a government a provisional right to make decisions on our behalf. We still have to decide whether our natural and non-contractual obligations to other members of our society are best served by obedience to the government of the day. We are not torn, as is sometimes suggested (10) between either obeying a government and thereby giving up moral autonomy, or remaining morally autonomous and therefore having to deny the right of any government, even a democratic one, to make commands. The mistaken premise on which this view rests is, I believe, that we have a government to do our moral thinking for us. This is not so. We have a government to help us organise a just society, and it should not be our ruler but our partner. Sometimes a democratic government will need to restrict our freedom for the benefit of others; (the question of whether it should ever restrict our freedom for our own benefit will be considered in Chapters 8 and 9) but it will also have to protect the important freedoms necessary for our participation in the organisation of our society and the fulfilment of our obligations to its members. The restrictions of freedom imposed by a democratic government are not legitimate because we have contracted to accept them, or because they are expressions of our own wishes, but only if they are the necessary means of organising society for the benefit of all its members.

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CHAPTER 6

THE RIGHT TO LIBERTY

The Right to Liberty

The suggestion that we have the non-contractual obligation to play a part in establishing a just society, and that the state may legitimately restrict our individual freedom in order to promote that end, may sound like an acceptance of a dangerously high level of state interference in individual liberty. However my claim is not as careless of individual liberty as it might sound. It is a claim about the conditions under which restrictions of liberty would be justified if the government and the various agencies of the state were also striving to establish a just society. It does not justify every restriction of liberty which a government may claim is in the common interest. That governments may, and do, try to infringe individual liberty on the grounds that this is necessary for the organisation of a just society when this is not the case is undeniable, but this demonstrates the fallibility or duplicity of those in government, and cannot be taken as a criticism of the principle. Nevertheless, it will be asked whether there are no limits to the restrictions the state may legitimately place on the individual in the name of the common good or in the interests of the other members of society? Have we no individual rights to liberty that the government cannot violate in the name of the greater good?

In considering the question of whether we have a natural right to liberty I shall start by looking at what is meant by saying that we have a right to something for there are many theories about the variously described natural rights, human rights and rights of man. There are theories which treat the phrase 'X has a right to Y' as purely descriptive, such as positivist theories which state that there are no rights where there is no power to achieve whatever is claimed; (1) and legalistic theories which say the

only rights people have are those laid down in law; (2) and there are a number of theories which accept the existence of moral rights, even where there is no power to enforce them, and share the view that statements about rights are prescriptive. The existence of natural rights has been confidently assumed (3) and equally confidently dismissed as nonsense, (4) from which diversity and disagreement we can learn little about rights except that if we do have them it is not in the obvious way we have arms and legs.

The first, the least controversial and some would say the only meaning of 'rights' is to be found in a legal context. We have a legal right to have, do or not do what the law says we should be allowed to have, do or not do, and other people (either particular ones or all others) have a corresponding obligation either to provide the object of our right or not prevent us from attaining it. Often, however, the term 'right' is used outside the legal context, of a moral right which may have no chance of being upheld in court. When, say, black South Africans claim the government has no right to impose apartheid, they clearly are not referring to a right enshrined in the law of the land. However, though rights may exist beyond the legal code, they do not exist independently of human society. Even lone reformers claiming hitherto unacknowledged moral rights are appealing to a wider audience beyond their own country and generation rather than postulating the existence of metaphysical rights. Rights exist in a social context and cannot be totally unacknowledged and unaccepted by anyone anywhere. Though this prompts the unanswerable questions of how many people must acknowledge a right for it to exist, or how long we should wait for it to be acknowledged, there is, in the notion of a right, some implication of others acknowledging the right and accepting the claim. Individuals claiming rights are not listing possessions, but contributing to a joint decision about how we should treat each other and making a statement about how we should behave towards

each other.

The idea that there must be a connection between having a right and having it acknowledged arises in realist theories which equate rights with expectations. These say that people have the right to have or do X if they have a reasonable expectation that they will be allowed to have or do X, but this argument is correctly criticised on the grounds that what we feel is morally due to us (our right) is often very different from what we may realistically expect. However, although realistic expectations are predictions of the future rather than statements of belief about what ought to be, there is another usage of 'expectation' which is connected with the language of rights. "We expect children from this school to put their crisp packets in the litter bins", headteachers may announce at school assemblies, though experience will have taught them that realistically they must expect many packets to be dropped on the floor. They use the word 'expect' for what ought to happen, and what could happen, though alas it might not. In this 'school assembly' sense of 'expect' human beings expect to be treated properly by their governments and not arrested arbitrarily and tortured, even though actual experience has taught them otherwise, for they ought to be free from such evils and it is possible that they could be. If the standard that is 'expected' were rarely if ever achieved then talk of expectations, even optimistic school assembly expectations, would be inappropriate. 'Rights' can be stretched a little further than expectations, as we can maintain in the teeth of all opposition that we have a right, but if our claim is valid we expect it to be acknowledged at some time.

If talk of 'expectations' and 'rights' is talk of what ought to be, the question arises as to what, if anything there is to the notion of rights beyond the idea of what ought to be. Is anything extra gained when we say "I have a right to do X" or "You have no right to do Y"

beyond what is expressed by "You ought not to stop me doing X" and "You ought not to do Y"? Apart from in the strict legal sense of 'right' I believe that by talking of 'rights' we add nothing to the idea of moral imperatives. If we are imprisoned without trial and we claim the government has no right to imprison us and that we have the right to be free, we are saying that the government ought not to lock us up without a trial and that it ought to let us go. If a torturer, having doubts about his job, asks why he should not torture, the answer "Because people have the right not to be tortured" may be couched in the form of an answer providing a reason, but it is really a restatement of the claim that he ought not to torture. I realise that to talk of rights in this way seems rather prosaic compared with the inspiring demands for human rights or the rights of man. However, I maintain that all such claims are basically statements about how people should be treated, and how others should treat them.

It might be asked why, if what I say is correct, we should use the phraseology of rights at all. We do so firstly because it is persuasive. When we claim a right it sounds as if we are giving a reason for being allowed to secure, or attempt to secure, the object of our right, rather than just asserting our claim. Secondly, the use of 'right' rather than the corresponding sentence using 'ought to' puts the emphasis on the person in the relationship who has the right rather than the one with the obligation. If we say "X has the right to a fair trial" we are focussing more of our attention on X than if we say "Y ought not to arrest X arbitrarily". Obviously what Y must not do to X and what X must not have done to him by Y are the same, but focussing on the person with the right emphasises his or her importance and avoids the implication that Y would shun the action for reasons of his own, such as that it would be demeaning for a man in his position or would endanger his immortal soul. Thus when we say "X has the right to

Z" we are demonstrating that it is with X's welfare or justice to X that we are concerned, and not the moral health of others. We are not, however, providing a reason why X should be allowed to have or do Z.

As claims about rights are made for people (and occasionally for animals and fetuses) and are concerned with the holder of the right rather than others, the range of occasions in which we speak of rights is narrower than that in which we use 'ought' or 'ought not'. Perhaps I ought not to rob the bank or blow up the bridge, but rights are held only by sentient beings and the bridge and bank have none. There is much discussion about which beings can have rights. Hart claims that there is a difference between having a right and benefitting from the performance of a duty (5), and that while babies and animals benefit from the fulfilment of our duty to treat them properly they do not have the right not to be ill-treated. According to Hart, if one person has a right and another the corresponding obligation, their relationship

"is not that of two persons bound by a chain, but of one person bound, the other end of the chain lying in the hands of another to use if he chooses." (6)

According to this idea people who have rights must be capable of choosing whether to exercise the right or not, and this rules out not only babies and animals, as it is intended to, but also the mentally handicapped, possibly the mentally ill, and those who are seriously ill or unconscious. To claim that my hamster has the right to proper treatment may seem to stretch the notion of rights rather far, but this seems less unacceptable than an interpretation which restricts rights to those who are healthy and bright enough to consider waiving them and releasing others from their obligations. The implication of Hart's view is that no-one has the right to be cared for when seriously ill or senile. Presumably even those who had been promised care in their old age would lose their right to that care

at the very moment they needed it most, and those who had contributed to a medical or other insurance scheme, in the understanding that this would entitle them to treatment or compensation when they needed it, would lose the right to have it when they became so ill or badly injured that they could not choose to waive their right. Other people might still have the duty to care for them, but the care would not be theirs as a right even if they had arranged it and paid for it in advance.

Hart's main point, however, is not to restrict right holding to the bright and healthy but to show that if there are any moral rights at all we have a natural right to freedom. The right is natural because it is not conferred or created by voluntary action. It belongs to all people just because they are people and not because they belong to a particular society or are in a special relationship. However, Hart does not take the view that because a right is natural it has a special status and is inalienable or imprescriptible. A natural right does not necessarily take precedence over other special rights. Indeed these special rights are a moral justification for overriding the natural right to freedom. For example, when one person uses his natural right to freedom to take something which belongs to someone else the right to freedom is overridden by the owner's special right to keep what he owns. The owner's right is a moral justification for limiting the freedom of others to help themselves to his property. The special right justifies the restriction of another's freedom: a justification which would not be needed unless a natural right to freedom existed.

Because of the sharp distinction he makes between an obligation (which corresponds to another's right) and things we ought to do, Hart believes

"There is no contradiction or other impropriety in saying 'I have an obligation to do X, someone has a right to ask me, but now I see I ought not to do it'. It will in painful situations sometimes be the lesser of two moral evils to

disregard what really are people's rights and not perform our obligations" (7)

Thus he says that sometimes we ought not to fulfil our obligations, but that when this is the case the obligations and the corresponding rights still exist. I suggest that this is mistaken. If having a right is having a moral justification for interfering with the liberty of another person, then Hart is claiming that sometimes we have no moral justification (we ought not) to do what we have a moral justification (we have the right) to do. I believe this contradiction arises from a too rigid distinction between what we have an obligation to do and what we ought to do. As I argued earlier, rights are not things which belong to us: to use the language of rights is to make a statement about what people should be allowed to have or do which places emphasis on the holder of the right. When we talk of 'rights' we are giving greater attention to the importance of the person with the rights, and it is the same with obligations: but what we are talking about in both cases is what ought to be done.

Thus, whereas Hart would say that X has a right which still remains even when it may be morally justified to override it for some greater good, I believe that the greater good negates the right. I am not suggesting that 'greater good' means the good of the greatest number and that therefore the rights of individuals or minorities must be sacrificed, but simply that if it is morally justified to override a right and cancel an obligation then there is nothing which remains. If we have promised X to murder Y and then realise that we should not, we do not have an obligation to X, and X does not have a right which has been overridden: the greater good of not doing murder nullifies the obligation to keep promises and the right to have promises kept. There are many less dramatic examples of rights which seem to have been overridden for the sake of a greater good but which, I would argue, did not ever exist. Parents may be told that they have the right to

choose their children's school, and then they feel aggrieved when the school of their choice is full and their children are allocated places elsewhere. I believe that this is not a case of a right overridden but of a right that was improperly described. The 'right of parents to send their children where they choose, and the obligation of L.E.A.s to carry out the wishes of every parent, never existed. What might have existed was the right of choice providing the school was not full, the allocation in line with Government and L.E.A. policy etc. etc. The existence of 'et ceteras' complicates matters and prevents us from being able to lay down precisely what our rights are, for our rights are the things we should be allowed to have or do, and we cannot know exactly what these are unless we know the full circumstances. The rights we have, if described accurately, are always 'rights providing that.....' and, of course, it is not always possible to fill in the provisos in advance.

In claiming that obligations which have been overridden cease to be obligations, I would not want to suggest that the recognition of our obligations is unproblematical, or that genuine and distressing conflicts do not occur. My claim is firstly that we cannot have an obligation to do what is wrong, assuming, of course, that it is clear to us what is right or wrong. This is a large assumption, and much of the uncertainty and heart-searching that takes place over the question of our obligations is an attempt to work out what would be right and wrong, and therefore what our obligations really are. I state, however, the theoretical position that if something is wrong we do not have an obligation to do it, and others cannot have a right that we do it.

Secondly, I claim that we cannot have an obligation to do the impossible. So, if there is a conflict between two apparent obligations that are incompatible, we cannot have the obligation to do both if this is impossible. If,

for example, I have promised my children to attend their school play or parents' evening and I am knocked down by a bus, I cannot reasonably be said to have an obligation to keep my promise or do my parental duty and turn up. Similarly, if I were to hear that my mother had been taken seriously ill and was in hospital asking for me, and this seemed to be the more important and pressing obligation, then, as I could not be both at my children's school and mother's bedside I cannot have an obligation to go to the play or parents' evening. However, to say this is not to claim that my obligations to my children in respect of this particular issue cease entirely. Though unable to be at school myself, and therefore free of the obligation to attend, I would immediately acquire other non-contractual obligations - perhaps to explain to the children what had happened, to make other arrangements to see the teacher when I had recovered or whatever. My obligations as a parent would not have ceased when overridden by my obligations as a daughter, only the particular one of keeping my promise and attending the school function. However, these new obligations and the corresponding rights of others would depend, like the overridden obligations, on what was possible.

However, to return to the subject of the right to freedom, according to Hart

"Any adult human being capable of choice (1) has the right to forbearance on the part of all others from the use of coercion or restraint and (2) is at liberty to do (i.e. is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure others." (8)

We cannot, as I have already argued, have a right to do what is wrong, and therefore, as Dworkin points out, we cannot have a natural right to liberty for liberty is a licence to do right or wrong. (9) Dworkin says that every law is an infringement of liberty, but we only protest that our right to liberty has been infringed in a limited range of cases. Many restrictions of trivial liberties are not considered important at all, which they should be if it is Liberty itself which is important. Dworkin gives the example

of the creation of a one-way street and of restriction of free speech, both of which are restrictions of liberty but only one of which arouses complaints about the violation of individual's rights. Dworkin puts forward the obvious suggestion that this is so because free speech is a basic liberty, but then says

"However...if the distinction between basic liberties and other liberties is defended in this way, then the notion of a general right to liberty as such has been entirely abandoned." (10)

Clearly, if free speech is important and the freedom to drive up and down a one-way street is not, then it is not liberty in general which is valued and to which we claim to have a right, but certain particular liberties. As Dworkin argues, the idea of a general right to liberty creates a false sense of conflict between liberty and other values and provides too easy an answer to the question of why suppression of free speech is wrong. If we do not assume that we have a right to freedom as such then we have to probe more deeply to find out what we think is really important about free speech, and why it should be allowed.

As the restriction of some freedoms requires a much stronger justification than others, it cannot be freedom itself that is so valuable. The mere fact that a one-way street is in the public interest is reason enough to set one up and restrict individual freedom, Dworkin says, but to say that someone has the right to free speech is to say that he has that right even if it is not in the public interest. He calls individual rights "political trumps held by individuals" (11) - a view similar to that of Margaret Macdonald who says that claims to natural rights tend to arise

"when the plain citizen tries to make..articulate his obscure, but firmly held conviction that he is not a mere pawn in any political game nor the property of any government or ruler, but the living and protesting individual for whose sake all political games are played and all governments instituted." (12)

I would agree with the point that individuals matter, must be considered, and do not belong to rulers or governments, but, as I have argued, they do belong to a society; though not in

the sense of being society's possessions. I am unhappy with Dworkin's claim that individual rights exist even when they are not in the public interest, for our rights are what we should be allowed to do or have, and this cannot be decided without reference to some concept of public interest, or general good, and the rights of others. Although individual rights sometimes appear contrasted to, or even in conflict with, what it would suit the government, the state, or society in general to permit, this does not mean they exist regardless of the public interest, for they are not individual possessions, but individual examples of what everyone should be allowed to do in similar circumstances. We cannot decide what individuals should be allowed, by the other members of their society, to do or have, without taking account of what the effect of exercising those individual rights would be on the rest of society, or other individual members of it.

For Dworkin's example of free speech, which he claims is a right even if it is not in the public interest, I believe it is necessary to have a conception of public interest that goes beyond the immediate issue. Even if what a person has to say may be judged to be not in the immediate public interest, suppressing it may be against that interest in the long-term. A precedent for silencing unpopular opinions, once set, could be used to silence opinions and facts that it would be in the public interest to hear. However, even an important freedom like the freedom of speech should not be seen as an inalienable right, for speech is action and actions have consequences to others. The fatuously expressed Second World War injunction to "Be like Dad, keep Mum" had behind it the very reasonable assumption that when other people's lives are at stake we should not indulge in an excess of free speech. That and other freedoms which were generally thought of as rights in peacetime were viewed differently when circumstances changed so dramatically.

It has been the liberal tradition to regard rights

as the same for everyone everywhere, and, consequently, because economic standards vary so, to make a sharp distinction between civil/political liberties or rights and social/economic liberties or rights. Cranston, for example, argues that the philosophically respectable concept of human rights has been muddled by the incorporation of new so-called rights which are really aspirations. (13) He claims that the traditional rights to life, liberty and a fair trial are, as real human rights must be, rights for all people at all times, which the new economic and social rights, such as the right to education, work or an old-age pension, cannot be. These latter so-called rights, he argues are expressions of ideals and cannot be proper rights because it is not always possible to secure them, and while we have an obligation to respect rights, we cannot have an obligation to do the impossible. I would agree that the right to a holiday with pay (one of Cranston's examples of new 'rights') is less important than the right to a fair trial, but I do not believe he is correct to distinguish between the traditional, respectable human rights which are of paramount importance, always the same and able to be secured by simple legislation, and new, so-called rights which are expressions of utopian aspirations.

Firstly, not all the traditional rights are easily secured or can be maintained universally. It is true, as Cranston says, that not all countries are able to set up a welfare state, certainly, but nor is it the case that they could all easily secure the traditional basic human rights either. Most governments could do a great deal better than they do, and often use 'national interest' as a euphemism for their own interest when suppressing liberties, but nevertheless there are circumstances such as war or other emergencies in which some of the traditional basic rights such as freedom of speech or movement are extremely difficult for governments to guarantee. Secondly, even the traditional rights are not all of equal value: I believe most people would regard freedom from arbitrary arrest and torture more important than freedom of

speech and movement. Thirdly, economic and social considerations cannot be separated from some of the traditional rights. If we have a right to life it is not clear why this should be interpreted narrowly as the right not to be killed unlawfully, rather than according to a wider interpretation which includes having enough to eat.

I argued in Chapter 3, with regard to restrictions of freedom, that if we are concerned about freedom we should not take a narrow view of what constitutes a restriction, but should include all removable constraints brought about by human action. In the same way if we are concerned about the way people should be treated and what they should be allowed to do and have (i.e. their rights) then we should not limit this concern to the traditional rights. As Margaret Macdonald says

"assertions about human rights...are assertions of what ought to be as the result of human choice." (14)

The things that ought to be vary according to what is possible, and while Cranston is right to say that no-one can have an obligation to do the impossible, once something has become possible the obligation to do it may be as binding as any other. Thus, if it is possible to prevent starvation or to provide education for all, the obligation to do so, and the corresponding rights, should no longer be judged as utopian aspirations which are of a different order from the traditional human rights.

Rights and obligations which exist, not because they have been voluntarily agreed but because they belong to all human beings just because they are human beings, could be called 'natural rights'. However, to acknowledge that there are natural rights in this sense is not necessarily to accept that they are inalienable or imprescriptable and may never be overridden. This more extreme view is taken by Nozick who says

"Individuals have rights and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are those rights that they raise the question of what, if anything, the state and its officials may do." (15)

Nozick disagrees with Hart's claim that one of the special rights which overrides the natural right to liberty is the right of people conducting a joint enterprise according to rules to require submission on the part of others. (16) It is a right of this kind, Hart claims, which members of a society have over other members, but Nozick questions whether people who benefit from a social enterprise have the right to demand a contribution from others, even if they benefit as well. He asks why this should be, and what would be the case if the others do not benefit, or if they do benefit but would rather not, and he concludes

"On the face of it enforcing the principle of fairness is objectionable. You may not decide to give me something, for example a book, and then grab money from me to pay for it...You have ..even less reason to demand payment if your activity that gives me the book also benefits you." (17)

Nozick argues that there is very little the state may do without violating individual rights, and that, therefore, a minimal state limited to the narrow functions of protection is all that is justified. Although I disagree with his claims about the kind of state that is justified, his criticism of Hart's position requires further examination. Hart says that apart from the natural right to liberty there are special rights and obligations which arise from voluntary actions, and that political obligation is based on one of these: the right of those who have submitted to restrictions while undertaking a joint enterprise to require a similar submission from others. Nozick argues that those who do not voluntarily take part in an enterprise are under no obligation to obey the rules. If, to use his example, a book is given to them, they have no obligation to pay for it and no-one has the right to take their money. Nozick's criticism of Hart appears reasonable because of Hart's insistence on the voluntary nature of obligations. If, however, as I have argued, obligations are not necessarily voluntary but are simply things that we ought to do, and if, as I claim also, one of our inescapable obligations is co-operation in the organisation of a just society, then Nozick's criticism is not justified.

There is an irreconcilable conflict between my view and that of Nozick. It can be seen in the conflicting claims that the state may legitimately use its coercive apparatus only for protection against aggression, and the opposing view that one of the most important functions of the state is to promote the welfare of its members: it is apparent also in the claim that any form of redistribution (apart from reparation, which does not count as redistribution) is a violation of individual rights, and the opposing claim that a reasonably equal distribution of important goods is an essential part of a just society. However, the basis for these differences can be found in fundamentally different views of man, of society and of rights. On the one hand there is Nozick's individual with rights of freedom, but no rights of reciprocity except those voluntarily agreed, who comes together with others to serve his own purposes, and with them forms a society which cannot justifiably require him to do any more than fulfil his contracts and respect the rights of freedom of others. Opposing that is my view of man as a social being as well as an individual, whose rights of reciprocity and rights of freedom arise, as do his obligations, within a social context. I can see no reason to start, as Nozick does, with individuals and one certain set of rights, and ignore the inescapable non-contractual obligations that arise from the mutual interdependence of human beings.

Individual rights cannot be inalienable or imprescriptible not only because individual interests sometimes have to be subordinated, but also because on many occasions the prima facie rights of individuals conflict. Benn and Peters point out that, for example, in a famine one person's right to life might conflict with another's right to property. There are public discussions about the conflict between the right to strike and the right to work, the right to stage mass demonstrations and the right to walk peacefully to the shops or through the park. As Benn and Peters say

"social regulation is a continuous process of adjustment between conflicting claims; the theory of absolute natural rights would seem to make the process impossible." (18)

For a case to be made for absolute rights it would be necessary to specify in advance all the exceptional circumstances in which the right would not apply. Thus we might say not that we have an absolute right to life or liberty but that we have the right except in this circumstance or when that happens, but we cannot know in advance what circumstances may arise. It might be claimed that we have the right to liberty, but when examined more closely the right to turns out to be a right to liberty except when we break the law, or when our liberty clashes with that of others, or when we are found to be carriers of deadly infectious diseases etc. etc. As was argued earlier we cannot specify in advance exactly what our rights are, because they are the things we should be allowed to do or have, and these vary according to changing circumstances.

If we take 'right' to mean the treatment that is due to people or what they ought to receive, and 'natural' to mean not specially created for any particular people but due to all human beings, then it could be said that we have natural rights, but not a right to liberty as such. We cannot have this right, because liberty is license to do good or harm, and there can be no right to do harm. However there can be a presumption that people should be free to decide for themselves what they do in the absence of a good reason to restrict them. What will count as a good reason for restricting liberty will vary according to the liberty in question and the circumstances in which it is to be exercised. This is a subject on which there is much debate, and as individual members of society affected by the decisions, I would claim that we have the right to take part in this debate about what should and should not be allowed. Individuals do matter and should have their views and interests taken into account together with those of others when liberties and

rights are discussed. However, it should be remembered that in saying that we have a right to contribute to the general discussion and have our views and interests considered I am not giving a reason why this should be allowed. To say that we should be allowed to contribute our views and have our interests considered and to say that this is our right are just two ways of saying the same thing.

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"The natural right of all nature and consequently of every single individual extends just so far as his power extends; and therefore whatever any and every man does after the laws of his nature he does by the highest right of nature, and he has only so much right over nature as his power avails." And Hobbes, Man and citizen P.115
"Neither by the word right is anything else signified than that liberty which every man hath to make use of his natural faculties according to right reason."
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3. See, for example, Nozick, Robert Anarchy, state and Utopia
4. For example Bentham Anarchical fallacies Op. cit. P.501
"Natural rights are simple nonsense; natural imprescriptable rights are rhetorical nonsense; nonsense on stilts"
5. Hart H.L.A. Are there any natural rights?
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CHAPTER 7

CHILDREN'S RIGHTS TO LIBERTY

Children's rights to liberty

In the previous chapter I claimed that while we have no right to liberty as such, we have a right to - i.e. we should be allowed to - take part in the making of decisions that affect our lives and in the debate about how our society is run. I did not specify who 'we' are, and in this chapter will be considering whether children should be included amongst the right-holders, and, if so, whether their rights differ significantly from those of adults. The subject of children's rights is one on which there is much disagreement and confusion, some caused by different interpretations of what rights are and some by different views of how children should be treated. The problems fall into three broad areas: firstly there are all the problems of rights in general, which were dealt with in the previous chapter; secondly, the question of whether children are the sort of beings who can have rights; and thirdly, if they are, there is the question of what rights they have.

Clearly the answer to the question of whether children have rights and what these are varies according to the interpretation of 'rights' that is being used. If the whole notion of rights is nonsense and they do not exist then children cannot have rights. If, as Hart says, (1) to have a right one must be able to choose to waive it, then young children and babies cannot have rights but older children would not be excluded. Disagreement about whether rights are legal requirements, moral imperatives or statements of idealistic aspirations will be carried over into the discussion about children's rights as will the distinction between what Raphael calls rights of recipience and rights of action.(2) Those who are concerned with the former concentrate on the child's right to certain welfare benefits such as love, a home, toys, a free education, a nationality or whatever. The actual list varies but the emphasis is on

what children should have, whereas the alternative view is concerned with whether children should be free to vote, earn money, leave home or have sexual relationships. Again the list of activities varies but the emphasis is on what children should be free to do. The U.N. Charter of children's rights, for example, concentrates on their rights of reciepience and says nothing about what they should be allowed to do.(3) The draft charter of children's rights published in Where (4) shares the U.N. declaration's non-legalistic concept of rights but is much more concerned with children's rights of action. Both these declarations would be criticised by those who hold that the identification of 'rights' with idealistic aspirations devalues the concept of a right from something which must be respected immediately because of its overriding importance, to something desirable but non-essential which may be respected at some non-specific time in the future. (5) Where's draft charter makes it clear that it does not interpret 'rights' in this way, saying

"a charter or rights is not a legal document. Nor is it a description of what can and will happen tomorrow. It is an ideal statement of how the world might be." (6)

Clearly many of those who talk about children's rights are not talking about the same things.

I have already argued in the previous chapter that in my view to talk of people having rights is to make a statement about how they should be treated or allowed to behave. Furthermore it is to emphasise that the particular treatment is due because of a relevant feature of the person receiving the treatment and not because of the effect on someone else. Thus if we say A has the right not to be tortured we are saying not that he has a possession - a right - but that he ought not to be tortured, and also that B ought not to torture him because of some feature or features about A (perhaps his human dignity and capacity for suffering) and not because torture is an unreliable method of extracting information, or that it will make B unattractively callous, or that the screams will upset C. When I talk of

children's rights, then, I shall be talking of the way children should be treated or allowed to behave because of some significant feature or features they possess, and because of the effect such treatment has on them. Because my interest is in liberty rather than rights as such, I shall concentrate on children's rights of action, their rights to liberty, rather than their rights of reciepience but it is not possible to separate these completely. Sometimes rights of action are empty and useless if rights of reciepience are not respected; sometimes there is conflict between them, as with the right to receive protection and the right to make one's own decisions. However, unless I state otherwise, when I refer to children's rights I shall be thinking of the things they should be allowed to do rather than what they should have.

The first question which must be asked about children's rights specifically, rather than rights in general, is whether children have rights. Since differences should be demonstrated rather than assumed the question is better tackled by asking why should children not have rights if adults have them, and as I have already indicated the answer to this question is strongly influenced by the interpretation of 'rights' that is being used. Using my interpretation it is clear that children do have rights because there are certain ways they should (and should not) be treated because of the effect this treatment has on them. If their rights are different from those of adults, and if their freedom is to be restricted in ways other than those which apply to the rest of us, then it must be because of some relevant difference in them, and not because it suits adults to treat them differently.

As I have mentioned, Hart's interpretation rules out young children as potential rights holders. Another view which does this is the one which says that rights go hand in hand with responsibilities and obligations, and that as

children do not shoulder responsibilities they cannot claim rights. However although rights and obligations do go together they do not do so in the sense that only those with obligations can have rights. The relationship is not that A has obligations and so is allowed to have rights, but that A's right corresponds with B's obligations. Justice requires that those who want their own rights respected should carry out their obligations to others and respect their rights also, but we do not have rights as a reward for carrying out our obligations. There are, of course, special rights which may derive from the carrying out of special duties, such as the right to a week's pay for the person who has done a week's work, and those who had not earned the special right would not have it. The claim that children do not have rights because they do not carry out obligations may be the lesser claim that they do not have certain special adult rights because they do not share the relevant adult responsibilities. For example, if children do not contribute to paying the mortgage, keeping the house in good repair, or enabling the bread-winner(s) to pursue a career, then it might be argued that they should not (as Harris suggests they should (7)) have a right to share in its legal ownership. However, even if this is so, all that is demonstrated is that the possession of certain special rights corresponds with fulfilling certain related responsibilities and it cannot be taken to show that children do not have rights at all. Even if it were true that children have no responsibilities and obligations this would not entail that they cannot have rights.

It is sometimes argued that children do not have rights as individuals, but only as part of a family, which, it is assumed, is a whole with no conflicting interests within it. Acceptance of this view does not necessarily entail treating parents as the most important members of the family or giving them rights over their children. However, if it is argued that the welfare of the children is best

promoted by allowing the parents maximum freedom from external interference in the upbringing of their children, then treating the family as a unit with no conflict of interest amongst its members will, in effect, give power to the parents. The view that the family is a unit whose interests are taken to be identical with those of the husband and father was once popular with those who argued against the emancipation of women. The protection of the more vulnerable members was said to be best served by denying them independence and by placing them wholly in the power of the most powerful member who had legal rights over them as well as economic and educational advantages. This argument is seldom heard nowadays with regard to women, as it is more widely accepted that opportunities for independence give a better guarantee of proper and humane treatment than total dependence on the goodwill of another.

The argument is still used with regard to children, however, despite overwhelming evidence that some families do not serve the needs of the children in them, and that what many children need is protection from their parents or the chance to live away from them. For example, Robert Burt, taking the view that children do not need rights, says

"children cannot be adequately or even sensibly protected by giving them the 'rights' that state officials will enforce against parents. Children can only be protected by giving them parents. The Children's Rights movement today is in danger of ignoring this simple homely truth and thus dis-serving the best interests of children." (8)

Burt argues that to speak of rights for children is to be legalistic, rigid and disinterested in situations such as the home and school where we should be flexible and passionately involved with individual children.

Burt's reference to "state officials" illustrates another dimension to the debate: the fact that it is not merely about the assignment of rights and obligations between two groups - children and adults. The adults are further divided into parents and the state, both of which may claim the right to act in the best interests of the child; the

former claiming the right to raise children free from external intervention and the latter claiming the right to protect children from neglect or cruelty and to ensure that they are educated. Burt is aware that if children have legally enforceable rights these may have to be enforced by the state against the parents, and he fears that this will destroy what children need most - a close loving relationship with parents. In saying this Burt is demonstrating the attitude to rights exemplified in the common phrases "he's always standing on his rights" or "she knows her rights" which suggest that to know or claim rights is to be somewhat aggressive and awkward. When we get to the point in a relationship when we start talking of our rights then, it is felt, it is clear that the relationship has broken down, for happy families and good friends do not resort to bills of rights.

However, it should be remembered that in an ideal world we would not need declarations of rights for adults either, not even laws against murder, so we should not exclude children alone from being rights holders on the grounds that claims for rights would be unnecessary in a good family relationship. Sadly not all families are happy, and although state intervention in a family dispute would not be the most desirable state of affairs, it is not demonstrably worse than the alternative of children being oppressed. I would also argue that this attitude to rights is excessively legalistic, seeing an acceptance of children's rights resulting only in court cases and state intervention in family life. It is true that people sometimes have to make a stand and demand their rights, but this is usually only a last resort. A general acceptance of children's rights would mean that compulsion and confrontation would be the exception, in the same way that a growing acceptance of women's rights means that women now go unremarked and unopposed into areas where once only those pioneers who "knew their rights" would venture.

Apart from Burt's argument that children do not need rights, the other arguments against children being rights holders which I have considered have been dependent on a particular interpretation of what it means to have a right. Each argument could be rephrased more accurately in the form "if having a right entails X then children do not have rights", and my criticism has been that having a right does not entail what has been suggested. My interpretation of 'rights' does entail that children have them, for clearly there are ways that children should and should not be treated for reasons related to the children and not to the effect on others. However, because of the wide variety of rights it is possible to have, to say that children are rights holders is to say almost nothing. The important question to answer is what children's rights are, and to do this it is necessary to consider first what rights adults have over them.

The question of whether adults have the right to make decisions for children and to restrict their freedom is made more complicated by the fact that the adults are divided into parents and others - usually the state or its various agents. Both, on occasions, claim the right to make decisions for children and to restrict their freedom to act as they might otherwise choose. Often there are disputes as to who has the right to do so, but the question I wish to consider first is whether parents have the right to make decisions for their children - not whether it is parents rather than the state who have that right, but whether parents have the right and their children have the corresponding obligation to obey. If parents do have this right, rather than sometimes being right to restrain their children for their own or other people's good, then actions which are otherwise morally neutral or even good would be judged wrong because forbidden by parents. The right to restrict children's freedom would apply not only to dangerous practices such as

glue-sniffing or anti-social ones like playing the trumpet at dawn but harmless actions such as playing football in the park or joining the orchestra. Nor would it be necessary for parents to find reasons for their pronouncements; the mere fact that it was a parental requirement would be sufficient to justify it.

According to Wringer, the question of what children's moral status is, is fundamental to the problem of what rights adults have over them. He asks

"whether children are separate and to some extent morally autonomous individuals who must remain temporarily in the care and control of others for purely practical reasons, or whether they are in some way inherently subject to an adult's authority." (9)

He concludes it must be the former, because the traditional arguments against children having the right or liberty to do what they choose (when it is not a wrong action in itself) are not convincing. The old answer to the question of why parents should have the right to expect obedience from their children was that they had given them life, and it was even argued that this gave parents the right to take their children's lives. Locke criticised this view on the grounds that the act of giving does not entail a right to take back again, and he pointed out that if giving life carried with it the right to receive obedience then this would last for as long as the parent lived, which would probably be past the time when the children had children of their own. Thus when children became parents they could not have absolute authority over their own children because they would still be in subjection to their parents. (10) Locke acknowledged the right of parents to 'honour' from their children but said this was not the same as a right to power.

"Honour thy Father and Mother cannot mean an absolute Subjugation to a Sovereign Power, but something else...What law of the Magistrate can give a Child liberty not to honour his father and mother? 'Tis an Eternal Law annex'd purely to the relation Parents and Children and so contains nothing of the Magistrate's power in it." (11)

Parents seldom claim the right to take their

children's lives today, (though there are arguments about whether they have the right to deny them life-giving medical treatment). More often the question of parental rights over their children is about whether they should require obedience from their children, sometimes in such important areas as religion, education, employment and marriage, or sometimes in areas in which there is no question of the child's or anyone else's welfare being affected, but which are matters of parental preference. I would argue that there can be no right, as such, for parents to arrange their children's lives, restrict their freedom and expect their compliance, but sometimes parents will be right to make decisions for their children in the children's interest. To make out a case for parents having the right to the obedience of their children it would be necessary to show that children are incapable of making sensible decisions for themselves; that people incapable of making sensible decisions for themselves ought to have those decisions taken for them by others; and that the others who ought to take the decisions are the child's parents. The question of children's abilities as compared with those of adults will be discussed in the following two chapters on paternalism, as will the view that people who cannot make decisions for themselves should have them made by someone else. For the moment I will say only that the acceptance of this view would have consequences which would stretch far beyond the subject of parental rights and would entail a right of the knowledgeable to the obedience of the ignorant: unless, that is, it is thought that the parents' right to their children's obedience is justified not because of their ignorance or irrationality but simply because they are children - a different class of beings from even the most foolish adult.

The idea that children are not persons in any meaningful sense often accompanies the belief that they are something akin to parental property. This view can be seen in antipathetical attitudes to children's rights of action and

to state intervention in family matters, and it is more often assumed than argued. If an argued rebuttal is needed, however, and the intuitive counter-assertion that people are never property is not sufficient, then Locke's criticism of the claim that parents have the right to rule their children is equally pertinent to the view of parents as owners. If procreation entailed ownership this would last until the death of the parent or until given up voluntarily. Therefore, if elderly parents do not own their middle-aged children, then nor do any parents own their young children. The proprietorial attitude towards children was also attacked by Mill who said

"One would almost think that a man's children were supposed to be literally and not metaphorically a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control of them."(12)

According to Mill, freedom for parents to do just as they wished with their own children is a misapplied notion of liberty, and although he did not advocate the extension of adult liberties to children he made it clear that he did not think that one of the liberties that must be guarded is the liberty of adults to control the lives of their own children.

Despite the fact that Mill, convinced libertarian that he was, argued that parents should have less liberty and not more with regard to the upbringing and education of their children, and that emphasis should be placed on parents' responsibilities towards their children rather than their rights over them, the claim that the state should not intervene in family life was argued then and is still argued today on libertarian grounds. Libertarians are in somewhat of a dilemma (though they do not always seem to realise this) because on the one hand they are in favour of people having control of their own lives and not being coerced by others, but on the other hand one of the freedoms they value most highly is for adults to bring up their children as they wish without the intrusions of the state. They do not acknowledge the fact that state 'intrusion' may safeguard

children's freedom, while freedom for parents may restrict the freedom of children to the point of oppression. In the argument between parents and state over who has the right to decide what is in the best interests of the child, the children's own opinions are usually overlooked. For example, in the celebrated case of *Wisconsin v Yoder et. al.* (13), members of the Amish community were allowed to withdraw their children from school two years early because they claimed the extra education was inimical to their religious beliefs. The issue at stake was taken to be the religious freedom of the adults; the views of the children were neither sought nor thought to be relevant.

A similar lack of regard by libertarians for the views of children was shown by the American Civil Liberties Union (A.C.L.U.) over the problem of Vietnamese children offered for adoption in the U.S. The A.C.L.U. was involved in a series of cases in which Vietnamese parents tried to regain custody of children in America - children who, in some cases, did not want to return to Vietnam. Explaining the A.C.L.U.'s position Rena K. Ulliver says

"If the right to bear and raise children is a fundamental liberty safeguarded by the Bill of Rights, then it cannot be abridged by a 'best interests of the child' standard". (14)

However I believe she is wrong in assuming that the rights of the parents should come before the best interests of the child. Though the welfare of children is not the only concern of society or parents, it has an extremely high priority, and when, in such sad cases, a choice has to be made between unhappy children and unhappy parents the decision should not be made in favour of the adults on the grounds of their parental rights.

If the justification for adults ever having the right to override children's wishes and make decisions for them is that this is in children's interests because they need protection and guidance, then adults' rights to make decisions for children should be limited to making decisions

in the child's interest and to the provision of the necessary protection and guidance. Their rights will not extend to rights over the child, regardless of what is in the child's interest. In saying this I am not assuming that the questions of what is in a child's best interest and whether the child is capable of understanding fully the issues involved in making a decision are unproblematic. They are far from that, but however difficult the application may be in certain cases the principle is simple. If adults have the right to make decisions for children on the grounds that children do not understand what is at stake and do not appreciate, as adults do, what is in their best interest, then, firstly, if children do understand the issues and can perceive their interests correctly, adults' rights to make decisions for them must cease, and secondly, the decisions which adults make for the children must be in the children's interest.

Ulliver's statement illustrates a confusion between two ways in which we might have the right to bear and raise children. We have that right, but we have it in the same way we have the right to marry - the state should not stop us if we are able to do it; but having children, like marrying, involves others who also have rights. No-one would suggest that we have the right to marry anyone we want to regardless of the opinion of the person we have chosen, yet that is the sort of right Ulliver seems to be claiming for parents: not only that they should be able to raise children as they wish, free from the interference of the state, but that the other partner in the relationship - the child - should have no say in the matter either. She falls into the trap of thinking that either the state or the parents must determine what children do, and she does not consider the possibility of children being allowed to make some important decisions about their own futures and of the state's 'interference' being limited to the role of ensuring that the child's decision is put into effect. When the decision is as important as where and with whom the child should live the question should not

be "Who has the right to the child?" but "What does the child want?" or "What is in its best interest?" If the child is old enough to understand the issue and have an valid opinion on it then that should not be over-ruled on the grounds that some-one else has rights over the child.

The belief that children should be treated as persons who should be allowed to make decisions for themselves and not as the property of either parents or state was one of the main tenets of the Children's rights movement which emerged in the '60s. However, the comparison of children with possessions has been criticised as rhetoric by Wringe, who points out that though there are laws restricting what we may do with our property these limitations are not imposed in the interests of the property but in the interests of other people. (15) Limitations on what we may do with our children, on the other hand, are intended to be in the interests of the children, and so, Wringe concludes, children are not treated as property. It is true that children are not regarded in exactly the same light as the television or even the poodle but there are parallels. Early legislation requiring parents to provide for their children was introduced not for the benefit of children but to prevent them becoming a burden to the parish. Even if we now accept legislation protecting children against cruelty and neglect or requiring them to be educated these laws were all criticised when they were first introduced as an intrusion into family life and as destructive of parental control. It appears to be generally accepted also that parents may restrict their children's freedom in ways that no adult would accept and not only in circumstances in which it is in the children's own interest or to prevent harm to others. (One would need an unusually broad interpretation of 'children's interests' and 'harm to others' to include all arbitrary parental prohibitions and requirements.) Thus while it would be an exaggeration to say that children are treated as if they were parental property and nothing else, it is true, I believe, that they are often treated more like possessions

(even if cherished and pampered ones) than individuals with their own lives to lead and their own ideas on how they wish to lead them.

If children are not possessions but persons with plans and purposes of their own, it must be asked whether there is any reason why they should not be as free to carry out those plans as adults are. As was stated earlier, if children's rights are different from those of adults this must be because of some relevant difference between children and adults, and the question is whether age constitutes such a relevant difference. At first glance age alone does not appear to be the sort of difference that justifies differential treatment. Like sex or race it is beyond the control of the individual and it is but one characteristic shared by people who are in other respects very different from each other. Most frequently it is argued that it is not children's age alone that makes it right for adults to restrict the liberty of children and for children's rights to be defined differently from those of adults, but the accompanying characteristics of dependency, irresponsibility and irrationality. However, we are all dependent to some extent on others, and elderly and handicapped people are particularly so, but it is not suggested that their rights to liberty should be different from those of other adults, except in extreme cases. Irresponsibility and irrationality are often found in adults, so if it is possession of those characteristics which makes restrictions of liberty legitimate then there are many adults who should be restricted. As Harris says

"If freedom from control and full political status are things we qualify for by acquisition of a range of capacities then as soon as anyone possesses those capacities they qualify and if they never acquire them they never qualify." (16)

He concludes that we do not qualify for political or other personal liberties on account of our capacities and so we have no right to deny freedom from control or the right to vote to children on the grounds that they lack them. If we do not wish to be stricter with adults, it should be

considered whether we should lower the voting age or abolish it altogether.

It has been suggested that children should be allowed to vote or partake in other adult activities as soon as they are ready,(17) which, in the absence of qualifying examinations, would be as soon as they feel themselves to be ready. There is no one conclusive argument against this point of view, but there are reasons why it would not be right to free children entirely from all the restrictions which do not apply to adults. If children are to be allowed to vote, be sexually active, work for money, and choose whether to attend school we must acknowledge and deal with the problem that they may be manipulated or pressurized by adults. Children, at least while they are smaller and less articulate than adults are vulnerable to adult attempts to coerce and manipulate them. Holt, who argues for children to be allowed to share adult rights, claims that a society which agreed to give children the vote and other adult freedoms would not be the sort of society in which adults would manipulate, coerce or pressurise children, (18) but I find this argument unsatisfactory.

It seems foolish to argue for specific changes in the way our society is organised and then trust that there will be a corresponding change of spirit in every adult in that society. It is wiser, surely, to follow Rousseau and take men as they are and laws as they might be, and sadly some men and women as they are are likely to use children in ways that are not in the children's interests. We have abolished the death penalty but people gather at the scene of a murder trial at the defendant, showing that a change in the law does not necessarily bring about a different attitude. Similarly we might extend the suffrage and other adult rights to children, but this will not necessarily bring all adults to see that children should be treated as individuals with equal rights of choice. Holt tells us of the cruelty of parents to their children and of the number who maltreat, murder and neglect

them; yet his response to the fears that some parents may coerce their children to vote a particular way or exploit their labour if they were allowed to work is that such sentiments are

"snobbish and hypocritical." (19)

This position is inconsistent. Those who are concerned enough about children to want to extend their rights and freedom should ensure that they do not leave children with less effective freedom because there are more opportunities for adults to use their power over children unofficially. A wholesale extension of adult rights to children would give children some freedoms they may not understand, and could place them even more securely in the power of individual adults who wish to exploit them.

The notion of understanding is relevant to the question of children's rights because to say we have a right to do X is to say we should be allowed to do X if we choose, and we cannot be said to have chosen to act in a particular way if we do not understand something of the meaning of the action and what the choice entails. If children are to be free to choose to take on adult rights and take part in the debate about how our society should be run, then they must have some understanding of these rights and the issues being debated, or what they do when they opt to leave home or have a sexual relationship with an adult or vote will not be a free act. If we consider the example of voting it will be acknowledged that voting is not simply putting a cross by a name it is an action with a meaning, and, while it is not necessary to know all the political implications of a particular vote, unless a person understands the meaning of putting a cross by a name they are not voting. So we might give children the right to enter a polling booth and place a cross by a name from the first moment they could hold a pencil, but until they understand what they are doing they would not be voting.

I have often carried out votes in infant classes to decide such issues as which songs to include in the end of term concert and the elections can be chaotic. Many children do not understand that they are being asked to choose between alternatives so their hands shoot up for every song they like; and if I manage to clamp down on that electoral malpractice the first song on the list always wins. The minority who do not like the final choice are uncomprehendingly aggrieved because they thought we were choosing their favourite song and they cannot understand how something they do not like can be their favourite song! For all its apparent simplicity voting does not come easily to the under sevens, and to extend the right to vote to this age group would do nothing more than give an extra vote to the parents who could coach their children on where to place their cross.

It should be noted, however, that I have spoken of young children, and of a wholesale extension of adult rights to them. The argument does not, a fortiori, extend to children who understand what they are doing and are less likely to be coerced by their parents or other adults. However, the problem still arises of how to decide when people should assume adult rights. What must be decided is whether there is greater injustice in denying adult rights to all children below a certain age, allowing them to those who pass a qualification test, or allowing them to all, including those unable to understand or exercise them. If age is the criterion that is chosen then any age that is fixed upon will will discriminate unfairly against those below the age who would be capable of exercising their rights wisely. Harris says that

"We must remember that to deny someone control of their own lives is to offer them a most profound insult, not to mention the injury which the frustration of their wishes and the setting at naught of their own plans for themselves will add. Perhaps we should conduct annual examinations from an early age to be sure that we do as little of this sort of damage as possible?" (20)

However, I would suggest that the insult and injury would be greater from being examined and judged inadequate than from being judged too young.

If political knowledge rather than age were the criterion for being allowed to vote then there would be the danger that any test that was introduced to find out who was sufficiently well-informed about political issues to be trusted with a vote might discriminate against a section of the community - most probably the poor and ill-educated. This would substitute one injustice for another. If people have to qualify for adult rights, then unless a test could be devised that was more accurate and free from human error and bias than any test has ever been, there would also certainly be instances of injustice through misapplication of the test. Even if testing techniques were vastly improved and the possibility of corruption could be eliminated, individuals and groups would still be treated unjustly under such a system because they would be denied rights and excluded from playing their part in their society by other members of that society imposing their own standards and values. There is a manifest injustice in excluding people from so many important areas of private and public life on grounds which others have selected and which the rejects have no chance to change. If certain rights are basic, human rights (the way all human beings should be treated simply because they are human) then these should not have to be earned by the demonstration of certain skills. The third possibility, then, is to say that if all members of a society should have the same basic rights to make decisions regarding their private lives and participate in public life, then children too must be allowed these same rights. But this entails giving rights to some children who will not understand what is involved and it carries the risk that relaxing the laws about what children are allowed to do may place them more securely in the power of individual adults who are in a position to control them.

The argument that restricting children more than adults is not unjust because children will be granted adult rights eventually has been much criticised.(21) It is rightly pointed out that imprisoning everyone for several years could not be justified on the grounds that it is everyone who is imprisoned and that eventually they will all be released, and that individual instances of injustice do not cease to be injustices when they are multiplied. However, there is a sense in which a deprivation equally shared is considered to be less unfair than one meted out to a few individuals or groups, particularly if it is felt to be necessary. National Service, however much it was disliked by those who had to do it, was considered less unfair than the American draft for the Vietnam war which drew most heavily on the unemployed and those without college education. Similarly I would argue that the restrictions on children's freedom which are necessary to protect those who need it are less unfair when they are shared by all than they would be if attempts were to be made to sort out the competent from the incompetent. Discrimination on the grounds of age is rough and ready: it does not distinguish between those who are rational and mature in outlook, would drink moderately, have responsible sexual relationships and who are fortunate in having parents who would not exploit them, and those others who need protection from adults and from their own inexperience. In this it is less than just to some individuals. The inflexibility of law, however, is not confined to the the question of children's rights. Laws are general and therefore cannot make fine discriminations and though this is sometimes cause for concern when we feel that particular extenuating circumstances should be taken into account, it is also one of the strengths of laws. Their generality rules out partiality and arbitrary judgments. They have, at least, the virtue of letting us know where we stand, and although laws relating to the age at which we are allowed to do certain things restrict our freedom, they

also make it clear that after the stated age we are free to do those things. We do not usually have to prove we are capable or make out a special case and hope for a favourable judgement: we have our adult rights simply because we have lived a certain number of years. Discrimination on the grounds of age, unlike discrimination on the grounds of sex or race is not imposed by one group on another cohesive group. It consists of restrictions to which we are all subject at one stage of our lives and from which almost all of us escape. If these restrictions are necessary to protect children from worse injustice then I believe they are justified. The crucial question, then, is whether some restrictions are necessary for children in addition to those imposed on adults.

Despite remarkable stories of children surviving without adult help it is still the case that because of their size, inexperience and less-developed rationality they are more vulnerable than most adults and need protection and guidance. No-one would deny that this is true of babies, but the problem is that children grow in the experience and understanding necessary to exercise adult rights and withstand adult manipulation only gradually. Holt argues that what children need are not special rights and protection but the same rights and protection as the rest of us: (22) the protection of the law and the right to sue those who damage our interests. However, though I would agree that this would sometimes help to protect children, I believe they need additional protection, because the inexperience which might make them vulnerable to those who wish to exploit them would also be a disadvantage when they tried to claim their rights. The probability is that they would not be able to assert their ordinary rights as citizens even as effectively as adults can. If children have special needs and disabilities related to their age, then it is no more unjust to ensure that these needs are met than it is to discriminate in favour of other people who are handicapped in

some ways by ensuring that their particular needs are met. As Houlgate argues (23), lack of the capacity for rational choice is a handicap which prevents people from having an equal chance of the good life, and so restricting the liberty of those who are handicapped in this way is not to impose a burden on them, but to provide them with a benefit of protection and guidance.

Restricting children's freedom, then, in ways different from those in which adults' freedom is restricted must be in response to the child's need. Of course, the concept of need is itself problematic, and most adults who restrict children's freedom say (and sometimes really believe) that they are doing it for the child's own good. If individual circumstances are to be taken into account then important decisions in children's lives will be left to individual adults, because general rules cannot be found that will apply to all children. This obviously leaves the grounds for decisions on restricting children's freedom rather vague, and there will be much scope for individual value judgments. However, laws stipulating that all children should or should not be allowed to do X could not take into account the maturity and capabilities of individual children. Inevitably, if we accept that children's freedom should ever be restricted there will be disagreement about when that restriction is justified, because decisions on the important factors - the children's needs, interests and ability to choose rationally for themselves - are subjective. Children do not become rational individuals with plans and purposes of their own at one obvious point in their lives: they do so gradually, and are able to make sensible choices in some areas before they can do so in others. We know that making mistakes has educational value, and so children should sometimes be given the opportunity to learn from their own mistakes, but sometimes the dangers of allowing children to make their own decisions and mistakes will be judged to be too great. Therefore many of the arguments about children's

rights are not about whether children are inherently subject to adults and whether as a group they should have any rights of action, but about the age at which they should be free to make certain decisions. Should twelve year olds be allowed to choose to have their ears pierced, be tattooed or buy cigarettes? Should people of fourteen choose the subjects they study at school, or even whether they have to go to school at all? These are examples of the many questions asked about children's rights, and the children's rights campaigners correctly stressed that 'childhood' today is now prolonged far beyond what was normal only one or two centuries ago. Without wishing to suggest that previous generations were right to fix the age at which people start work at twelve, seven or even three, the existence of different standards should at least make us question our own and consider whether children ought to be allowed greater liberty to make their own decisions.

If restriction of children's freedom were based solely on genuine need and the promotion of the children's interests, I believe it would be less extensive than is common today. There would be certain areas of choice (personal appearance for example) where there was no question of harm to the child, which could be extended to even the youngest children capable of expressing a preference, and others where the recognition that people between the ages of, say, twelve and eighteen have more in common with adults than younger children would lead to an extension of their rights of action. However, sometimes children will need to be protected from themselves and the consequences of their own actions, and then adults will be obliged to restrict the children's freedom. Knowing that there is no perfect solution, concerned adult members of a society will be aware that new laws may be necessary to protect children, or that old ones no longer serve their original purpose and should be changed, but if children need protection and guidance beyond that needed by most adults, and if adults have an obligation

to provide this, then we can say that children have a right to this protection, and a right to have their liberty restricted.

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CHAPTER 8

PATERNALISM

Paternalism

According to J.S.Mill

"the only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral is not a sufficient reason. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others it would be wise or even right." (1)

In this chapter I want to consider the claim that the only legitimate use of power over an individual is to prevent harm to others. I shall suggest that we are sometimes justified in compelling or restraining others in their own interest - that is, in exercising paternalism - and that we have responsibilities to them beyond those of trying to persuade them and leaving them alone. Like all moral judgements this cannot be proved, but if we believe our responsibilities do not go beyond persuasion the consequences would be far-reaching, as can be seen if we imagine a society in which it was considered wrong to do any of the following: stop a three year-old child from drinking bleach, a twelve year-old from going on a glue-sniffing binge, an intoxicated friend from breaking a window or writing a letter of resignation while in a temper, or a mentally retarded person from signing a damaging contract.

In fact, although Mill claims that his one simple principle is that prevention of harm to others is the only purpose for which power can rightfully be exercised, he too admitted some exceptions (children and people from 'backward countries') and, once exceptions to the general rule have been made, it is necessary to say in what relevant way these are different, and then to accept that whenever and wherever similar relevant differences exist they will also be exceptions to the rule. Mill does not go into these details (and nor shall I until the next chapter) but simply asserts that paternalism for minors and backward peoples is justified

because

"Those who are still in a state to require being taken care of by others must be protected against their own actions as well as against external injury" (2)

We do not have to suppose that Mill thought anyone under twenty one or from a 'backward nation' was incapable of choosing their life plans rationally while everyone over twenty-one from a 'civilized' nation did nothing else. His purpose in writing "On liberty" was not to discuss the problem of just when people become rational, or even what to do with the minority who never do, but to make a plea for freedom from interference for adults, most of whom are fairly rational most of the time.

Mill's modified claim, then, is that paternalism is never justified for civilized adults, but even this is unusually strong and definite for Mill whose pronouncements are usually hedged round with qualifications. I believe it is too strong, being based on an overconfident assumption that as individuals we know, when we make choices, what the consequences of our choosing might be. As was argued in Chapter 3, what looks like a free choice may be the result of subtle manipulation or undue influence as well as plain ignorance. Hart points out, rightly, that since Mill's time there has been

"a general decline in the belief that individuals know their own interests best, and ... an increased awareness of factors which diminish the significance to be attached to an apparently free choice." (3)

He accuses Mill of mistakenly endowing people with

"too much of the psychology of a middle-aged man whose desires are relatively fixed, not liable to be artificially stimulated by external influences; who knows what he wants and what gives him satisfaction or happiness; and who pursues these things when he can." (4)

In fact we do not have to look far to find people doing things the predictable consequences of which will make them unhappy, and if this is the case then a utilitarian such as Mill should be in favour of some intervention which will prevent unhappiness. However, Mill was not a consistent utilitarian on this point, his concern for

liberty being so great that he felt coercion was not justified even if it did make people happier. To be consistent a utilitarian who disapproved of paternalism would have to argue that, a priori, the happiness of being allowed to go to the devil in one's own way is always greater than any happiness that might follow from paternalistic compulsion. However, this would not be convincing as it is not hard to find empirical evidence to the contrary. For example the day after the wearing of safety belts in cars was made compulsory, the news media featured a man whose car had overturned. It was, he said, the first time he had ever worn a safety belt, he would not have done so but for the law, and without it he would almost certainly have died or been seriously injured. Naturally he was delighted that the law had compelled him in his own interest, and I am sure that he, and everyone else whose lives have been saved by that law, feel that being deprived of a little freedom, and perhaps even a little self-respect, is a small price to pay for the benefit of being alive.

Yet even if paternalism can be defended on utilitarian grounds, and if Mill was over-optimistic in his belief that people always know best what is best for themselves, we are still uneasy about compelling people in their own interests. Paternalism seems to fit badly with our ideas of equality and liberty and we are wary of it. I think part of our mistrust of paternalism is that we are aware of the dangers of allowing people to use power over others on grounds that are hard to define and for reasons which owe much to subjective value judgments. It is not easy in practice to distinguish between what A knows will make B happier, what A thinks will make B happier and what A believes ought to make B happier, and there is also the danger that A may use a general acceptance of paternalism to do things which he says are for the benefit of B but are really in his own interests. Then again, if we acknowledge that individuals may be mistaken as to which is the best

course of action to pursue (and this human fallibility is part of the rationale of paternalism) then we must accept that this may be true of the paternalist as well. It is not only B who may be ignorant, under stress or subject to illegitimate persuasion: this may also be true of A. There are no experts in living to whom we would hand over the running of our lives, as we might entrust our car to a mechanic or our appendix to a surgeon.

To acknowledge that there may be difficulties in distinguishing genuine paternalism from its counterfeit is not, of course, to show that there is anything wrong with paternalism. To say that A may be mistaken, hypocritical or corrupt does not tell us what, if anything, would be wrong with his actions if they were prompted by a sincere wish to help B and a correct assessment of what is in B's interests. I make no apology, however, for mentioning the practical difficulties and problems of paternalism, for Mill was also concerned to point out that state interference on behalf of the individual was usually ineffective as well as, in his opinion, morally unjustified. Paternalism is a use of power over other people and so it is understandable that we should be worried about its potential misuse. However, although some of our suspicion of paternalism comes from the fear that the power of the paternalist may be misused, there is also some doubt as to whether even genuine concern for the best interests of others is a sufficient justification for compelling them to do what we and not they have chosen.

There appear to be two different and conflicting sets of ideas and no clear way of resolving the conflict between them. On the one hand is the belief that there is something of value for individuals in making their own choices, simply because they are their own, and that for these always to be made by someone else, no matter how wise, would be in some way demeaning. Together with this

goes the knowledge that, as a matter of fact, we learn to make wise decisions by sometimes making foolish ones, and so, if we are ever going to learn we must have the opportunity to make our own mistakes. On the other hand, most people, even Mill, believe that there are some circumstances in which we are justified in coercing people for their own good, and that anyone who is concerned about the welfare of others should not always stand by and watch them come to some predictable and preventable harm. What appears to be needed and what many have attempted to formulate is a principle or set of principles which lay down the conditions under which paternalism is justified, thus enabling us to secure the benefits of allowing some limited paternalism and to avoid or minimise its dangers. (That paternalism should be *limited* appears not to be in doubt. I have not encountered one claim that we are always justified in coercing people according to our ideas of what is good for them.)

Mill's principle is that

"Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually achieving that end."(5)

Other suggestions are that paternalism is justified if

- 1) there is no alternative way of achieving the same end;
- 2) there is good reason to believe that the person coerced would or will consent to the paternalistic interference;
- 3) the coerced person is helped to realise his or her own ends;
- 4) the judgement or desire which is overruled has been clouded in some relevant way, such as by ignorance, irrationality, emotional stress, inexperience or some other such cause;
- 5) the harm to be avoided is serious
- 6) the paternalism restricts present freedom but enlarges the possibility of future choice;
- 7) the value of what would have been chosen is not great;

It is necessary to consider these suggestions in some detail to see if any of them provides a justification of paternalism.

The requirements that paternalism should firstly be effective and secondly be the only effective way of achieving the same end may seem inappropriate criteria in a consideration of whether paternalism is justified because they refer to the practical questions of whether it works and whether it works better than anything else. However I believe they are important, for the question of whether paternalism works (i.e. does secure advantages for the coerced person) is not merely empirical and therefore irrelevant to a judgement of whether it is justified. The aim of paternalism is to benefit the person who is coerced and if the result of A's paternalism is disastrous for B (and if any sensible person could have guessed that it would be) then the cry "I only meant it for the best" will not serve as a justification. The question of whether there is an alternative way of achieving the same end is also relevant because if we admit that there are disadvantages in coercing people we must consider whether we could secure the advantages of paternalism another way. Dworkin considers this to be sufficiently important to make it one of his two principles of justified paternalism, saying that if there is another way of accomplishing the same end we should use it no matter how expensive it may be. (6)

As there are practical disadvantages to paternalistic coercion as well as moral scruples about its use, it is clearly preferable to use other methods of benefitting the object of paternalism if this is possible. However, Dworkin's principle that other ways should be used regardless of expense is too strong. A point will surely be reached at which the expense of an alternative method is sufficiently high to make it prohibitive. For example, a government which wanted drivers to wear safety belts would, following Dworkin's principle, have to be prepared to conduct personal interviews with every driver individually, pointing out the dangers, explaining the evidence and trying to convince the drivers of

the wisdom of wearing their belts before they could bring in paternalistic legislation. If the powers of persuasion of junior civil servants were not successful, then presumably the Ministers of Transport and Health would have to try before coercion could legitimately be used. The possibility that the time and money involved could be spent more profitably, and that it ought to be, cannot be ruled out - as it would be by Dworkin's principle.

As paternalism is concerned with making people do what they have not chosen to do, first thoughts would suggest that paternalism and consent have little to do with each other. However Dworkin argues that

"the basic notion of consent is important and seems to me the only acceptable way of trying to delimit an area of justified paternalism." (7)

To overcome the apparent incompatibility Dworkin stretches the notion of consent so that it contains prior and retrospective consent to specific instances of paternalism, consent to a government which may make paternalistic laws, and consent to general aims which may require paternalism for their achievement. His example of Odysseus, begging in advance to have his eyes and ears stopped even if he later says he has changed his mind, shows prior consent clearly, but it illustrates what is a minority of cases of paternalism, for we do not usually ask in advance for specific future restrictions. However, we quite frequently look back and say we are glad we were made to learn French or wear a safety belt, though we did not wish to at the time, because we now appreciate the benefits. Thus we give subsequent or retrospective consent to our compulsion. But does the presence of this subsequent consent mean that the paternalism was necessarily justified? I believe not.

Firstly, it is possible that, although the person who was compelled subsequently approves of the compulsion, the beneficial results might have been achieved by other, non-coercive, methods. Secondly, and more importantly I

believe, the person who gives the retrospective consent may have been so changed by the coercion that s/he is not able to do anything but consent, because the restriction and compulsion were geared to obtaining subsequent consent and, if successful, will have created a person who is incapable of refusing that consent. For example, people who have been brainwashed or indoctrinated may subsequently approve of this, believing that it was a justifiable method of introducing them to "the truth". Even in less extreme cases we may subsequently approve of coercion that was either unnecessary or predominately harmful. Human beings are resilient and often manage to extract something of value from the most unlikely or unpleasant experiences, but it does not follow that a paternalist would be justified in creating these circumstances in order to produce that 'something of value'. Listening to talk about war experiences or even school bullying, it becomes clear that many people believe they have gained something from these experiences, but it would not be justifiable to start wars or encourage bullying in order to foster admirable qualities such as fortitude. Even if they are right about the value of their experiences, perhaps as well as gaining something they have also lost something of which they are unaware. The six of the best which "made me what I am" may have done just that, and have gained subsequent approval, but it may have left the subject unable to appreciate that its main effect has been destructive rather than beneficial. I would argue that when we are considering paternalism, the likelihood that the person to be coerced will later approve of their coercion is an important factor in the decision of whether the paternalism is justified, but the probability, or even the certainty, of retrospective consent is not sufficient to justify coercion.

Indoctrinators and brain-washers restrict and coerce in order to impose their own conception of the good on their victims. It might be thought, therefore, that it is this imposition of values which is wrong and that compulsion

which assists those who are compelled to achieve their ends would be justified. I do not believe, however, that 'helpful' paternalism is always justified, nor that imposing a conception of the good is always wrong. My daughter has occasionally asked me to 'make' her do some music practice when an exam is in the offing because she feared that without a little coercion she would not do enough. So far I have agreed, and the coercion needed to help her achieve her conception of the good (passing the exam) has been minimal. However, I can imagine a situation in which I might rightly refuse to turn the house into a battlefield and myself into a tyrant to help her achieve her ends, particularly if I believed her long-term interests would be better served if I imposed my conception of the good, which involves learning the value of self-motivation and self-discipline.

Some of the situations in which we might most readily agree that paternalism is justified are those in which the paternalist's conception of the good is imposed: when dealing with the very young, the suicidal or the mentally ill, for example. We may make the assumption that those we coerce will come to appreciate our compulsion when they are older or less disturbed, but we are not helping them achieve the ends they have acknowledged, for it is because we believe they are mistaken in their values that we judge them to be in need of paternalism. Odysseus did not want to hear the sirens, so he was compelled to do what he really wanted, and this was known because he had made his wishes explicit. Usually, however, we do not have such a convenient statement about what others want to achieve and so we have to make assumptions about what they will want, or would want if they were fully rational and aware of all the facts. It is when we do this, that we run the risk of being mistaken. Some of our assumptions, of course, are quite reasonable. It is because we assume that people do not want to cut their faces on their car windscreens that most

people accept a paternalistic law insisting we wear seat belts. This law restricts our freedom, but it does so to help us achieve our own ends and in accordance with our own wishes - the wish not to be thrown through the windscreen. If we stop someone committing suicide, however, we are not helping them to achieve their own ends and are imposing our own conception of the good - continued life - on them.

There is always the possibility of a mistake when we assume we know what other people want, but the difficulty is compounded when we try to imagine what they would want (if they were not irrational or ignorant) or what they ought to want. Even if it were possible to be certain of what the rational thing to do would be on every occasion, there would be little individual freedom if the wise and knowledgeable were always justified in coercing the ignorant and foolish. As it is there are no experts whose views on what it is rational to desire should be followed, for individuals and individual tastes vary. In an attempt to overcome the problem of choices which might appear to be irrational but are genuine wishes and individual preferences, Hodson distinguishes between unencumbered and rational decisions. (8) An unencumbered decision is not the same as that of Dworkin's rational will or the choice of a fully rational person. It is the decision of an individual, but unencumbered by such factors as ignorance, emotional stress, undue influence or mental illness. The advantage of this distinction is that it places emphasis on the choices of individuals rather than on a fixed view of what any and every rational person would want. Thus we could accept as unencumbered the decision of a mountaineer who claimed not to want to die to make a hazardous ascent. An unencumbered decision's is an individual's personal decision, and individuals vary in what they want and think important.

However, I think the notion of unencumbered decisions is less useful than it first appears, because the value judgment on what it is rational to want is simply replaced

by another value judgment on whether the decision is encumbered. On one level it is simple and straightforward to see if ignorance has encumbered a decision. For example, if you do not know that smoking is dangerous then your decision to smoke is encumbered. However, in other circumstances the judgment that ignorance has encumbered a decision will be influenced by the values of the person making the judgment. I cannot be the only person who sometimes feels that if those who disagree with me knew what I know they would come to think as I do on the disputed subject. It can only be their ignorance or perhaps the undue influence of others which prevents them from acknowledging the evils of this system or the dangers of that course of action. How natural, then, for a powerful would-be paternalist to take any disagreement as a sign that judgments have been encumbered, and to overrule them. Also, if a decision is wrong then it must be encumbered, by ignorance, false reasoning or both. As none of us has perfect knowledge, all of our judgments are encumbered to some extent, and so it cannot be a sufficient condition of justified paternalism that the judgment or choice that is overruled was encumbered in some way.

So far, in my attempt to discover when paternalism is justified, I have been concerned mainly with certain features of the person whose freedom is to be restricted, such as whether they consent to the restriction or are incapable of making rational decisions. However, it is possible that the justification for paternalism lies not in something about the person whose freedom is restricted but in the nature of the act which is forbidden or prevented, and it is to this suggestion that I now turn, considering first whether it is the seriousness of possible harm that justifies paternalistic intervention. It might be questioned whether the size of the disaster to be averted should make any difference when a principle is a stake, for we do not say that people ought to keep big promises and not tell big

lies but that little ones do not matter. However, I believe that in the case of paternalism it is relevant for paternalism, unlike, perhaps, truth telling or promise keeping, is never desirable as such, but merely sometimes better than the alternatives: we never celebrate it, but see only if we can excuse it. A decision on when paternalism is more desirable than the alternatives must be influenced, then, by what the alternatives are, and so the question of whether the intervention will prevent serious harm or a minor mistake is relevant to its justification.

Mill was right to say that our own decisions have a special value simply because they are our own, regardless of the content of the decision. The taking of decisions which affect us is inextricably linked with our self-esteem and so any over-ruling of our personal decisions has to be for important reasons. However, for most people, injury, death and financial ruin are serious misfortunes to be avoided (or in the case of death, postponed) when possible, so if we have to weigh the value of a life against the more nebulous notion of the self-esteem which comes from making our own decisions, we usually decide in favour of the life - not least because when that has gone the self-esteem and possibility of making other decisions has gone also. The calculation would be different if instead of saving life we were preventing a small blunder or minor inconvenience. It might be noted at this point that the various factors to be considered in a decision of whether paternalism is justified are not entirely separate. The possibility of death or serious injury, for example, would be regarded by most people as a misfortune and so any paternalistic intervention which prevented it would assist the coerced person to achieve his or her own ends and would probably receive retrospective consent. The seriousness of the harm to be avoided is related also to the criterion of enlarging or enhance future freedom, which Dworkin considers to be very important to a justification of paternalism. (8) Certainly people who are

alive, healthy and well-informed will have a wider opportunity for future choice than the dead, injured or ignorant and so present restrictions which preserve life or promote health and knowledge may make for greater future freedom. However, the increase of future freedom cannot be a sufficient condition for justified paternalism or we would be constantly compelled to keep our options open. There are many things we do which produce irreversible changes in our lives and restrict our future freedom: we take and give up jobs, get married and have children, and these cannot be delayed indefinitely for the sake of enlarged future choice. Making decisions and accepting the inevitable consequences are part of what it is to live a rational and responsible life. It cannot be that preventing people from making decisions now that would close options for them in the future is always justified, for the consequences of choices made now will inevitably influence and restrict the possibility of making different choices later.

The final factor which I mentioned as relevant to a decision about the justification of paternalism does not refer exclusively to the act which is enforced or forbidden or to the person whose choice is overruled or prevented. It is the consideration of the value to the person who is coerced or what s/he is forced to give up. Firstly, of course, the person has to forgo making an autonomous choice, but secondly s/he has to give up whatever that choice would have been. If it is believed that freedom of choice itself is the crucial issue then the second consideration - the value of what would have been chosen - need not concern us at all. If it is the choosing that is all-important and not what is chosen, then choosing a brand of washing powder is as important as choosing a government, and being forbidden to watch Driller Killer as important as being prevented from hearing that the local beach is contaminated with radio-active waste. It is because this is not the case, that I do consider that the value of what would have been chosen is

relevant to a decision of whether paternalism is justified.

If we assume that motor cyclists do not usually want to die then we might agree with a law enforcing the wearing of crash helmets. For most riders this would involve only minor inconvenience and the cost of the helmet, but for motor cyclists who are also Sikhs it also involves disregarding a requirement of their religion. The benefit would be the same but the value of what has to be given up would be much greater. Similarly a law requiring the wearing of safety belts is intended to save lives, and a law forbidding hang gliding, mountaineering or pot-holing might have the same intention. However, while the first law would necessitate only installing safety belts and remembering to use them, the second law would entail adventurous spirits having to give up one of their great pleasures in life. The benefit of increased safety might be the same, but the value of what had to be given up would be much greater. However, it is not the case that paternalism is justified as long as the people whose freedom is restricted do not have to give up anything they value greatly. Once again I would argue that this relevant factor is not a deciding factor, and, like the other considerations mentioned so far, neither a necessary nor sufficient condition for justified paternalism.

In this attempt to find a principle of justified paternalism I have considered some features of the person whose freedom is restricted and also the nature of the act which is forbidden. I have not yet looked at the paternalist, except to say that we are rightly wary of powerful people who claim to know what is good for others and to have the right to enforce their views. The very word 'paternalist' conjures up a picture of an interfering busybody like Lady Catherine De Burgh who

"whenever any of the cottagers were disposed to be quarrelsome, discontented or too poor...sallied forth into the village to settle their differences, silence their complaints and scold them into harmony and plenty." (9)

It is clear that Lady Catherine enjoys managing other

people's affairs, and one cannot imagine her worrying about the morality of her interference, or thinking that the cottagers' wishes, plans and purposes were as important to them as hers were her, and as worthy of consideration. In short, paternalists of her type do not regard the objects of their paternalism as persons to be respected, and I suggest that respect for persons is essential to a justification of paternalism.

By this I do not mean that it is a separate criterion - number eight on my list - which we look for and assess in the same way as the others. It underlies these criteria and they are ways in which it may be expressed. For example, if we respect someone as a person but believe that circumstances are such that we should overrule their wishes in their own interest, we would want to feel that they would eventually consent to our action, but could not engineer this consent by destroying their ability to withhold it. Similarly we would want to enlarge their future prospects rather than restrict them and, respecting their aims and desires, only in extremis would we impose our ends on them. Aware of the dangers of paternalism, and the value of autonomous decisions we would seek to persuade and convince if this were possible, and only resort to paternalism if there seemed no other reasonable way of benefitting the object of our paternalism.

Respect for persons excludes the possibility of condescension, tyranny or using people as means to an end they do not share. It provides the basis of a paternalism based on fundamental equality, though clearly in one sense paternalism does not belong in a relationship between equals. Within the relationship one person is, perhaps, far-sighted, experienced and powerful while the other is not, but that does not alter the fact that the paternalist should see the other as a person with plans, wishes and ends of his or her own, and a right to freedom as great as that of the

paternalist. However, as was argued in Chapter 6, we do not have an absolute right to freedom, and we do have obligations and responsibilities towards other members of the community. Sometimes a conflict may arise between our responsibility for the welfare of others and our obligation to respect their freedom, but when those others are young and/or ignorant, irrational or in danger I believe our responsibility for their welfare will sometimes have to extend to over-ruling their wishes. It does not extend to considering them unimportant or irrelevant. There are no absolute criteria by which we can judge when paternalistic acts are justified, and no definitive list of the paternalistic behaviour and attitudes consistent with respecting persons. We can only try to balance the value to individuals of making an autonomous choice, the seriousness of the harm from which we seek to protect them, the likelihood of their subsequent consent to our compulsion, the value to them of what must be given up and the acceptability (or otherwise) of alternatives, the state of mind of the person whose decision is to be over-ruled, the possibility of protecting them or promoting their welfare by non-coercive means, the possibility that we may be wrong in our assessment of their interests, and then make our decision. If we are sincere in our belief that we are justified in our action, then we should be prepared for others to act in a similar way to protect us and promote our welfare also.

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CHAPTER 9

PATERNALISM TOWARDS CHILDREN

Paternalism towards children

In the last chapter I claimed that paternalism can be justified by reference to two notions - responsibility for the welfare of other members of the community and respect for persons. I argued that we could have no right to intervene in other people's personal decisions unless it is the case that we have some responsibility for their welfare, and although the existence of this responsibility cannot be proved the consequences of assuming that it does not exist would generally be found unacceptable. At the same time I accepted that condoning the use of power by individuals or groups over others less powerful than themselves was potentially dangerous, and might reinforce inequalities of power and freedom. I argued that for the paternalism to be justified it must not only be in the interests of the coerced but that the paternalist must respect the persons who are coerced as individuals with purposes of their own and as equals in importance if not in knowledge or experience. I said that there are no absolute criteria by which we can judge when paternalism is justified and no definitive list of the paternalistic behaviour consistent with respecting persons. However, I claimed that there were certain factors (such as the likelihood of subsequent consent, ignorance or lack of understanding of unperceived danger etc.) the presence of which would support a claim that paternalism was justified in a particular instance.

I now wish to argue that paternalism towards children can be justified in the same way and with reference to the same notions of responsibility for the welfare of others and respect for persons. It would not be necessary to make this point if it were not widely assumed that paternalism towards adults and children are very different activities, the former rarely if ever justified, and the latter self-evidently so. Although those who are antipathetic

to paternalism towards adults sometimes attempt to explain why their principles should not apply to all, more frequently the assumption is made that the basis for the difference in treatment is so obvious and unproblematic that it needs no explanation, and so the particular problem of paternalism for children is either ignored or else dismissed in a brief aside in which the author points out that what has been argued applies only to adults. When I say that paternalism for children is a particular problem I mean, of course, that it is and should be recognised as a particular problem for those who claim paternalism is right for children but not for adults, for they have to justify treating the two groups differently. I shall argue, however, that children are part of the general problem of paternalism, not a separate species of sub-persons or possessions to whom the adult ideals of freedom and self-respect do not apply.

Often, as I have said, the difference between children and adults which is taken to make paternalism right for one and not the other is assumed to be so obvious that it is not stated, let alone examined, but when reasons for differential treatment are given they are usually that children lack some adult competence. Mill, for example, who makes it clear that his antipaternalist principle is

"meant to apply to human beings in the maturity of their faculties..(and not) children or ...young persons below the age which the law may fix as that of manhood or womanhood"
(1)

says this is because

"those who are still in a state to require being taken care of by others must be protected against their own actions as well as against external injury." (2)

He assumes that the difference between adults and children is important enough and clear enough to make it justifiable to protect the latter but not the former against their own actions, and the difference of which he speaks is that adults have mature faculties and can take care of themselves while children cannot. Now whether we agree about that or not, once the qualities of maturity and self-sufficiency have been isolated as the criteria by which we judge whether

someone should be free from paternalism or not, then we should ensure that any children who show these qualities should not be subject to paternalism and any immature dependent adults should.

It is true that we associate 'maturity' with adults, but whatever 'mature faculties' are they are not acquired simply by reaching the age of twenty-one or eighteen. 'Maturity' encompasses, amongst other things, the ideas of rationality, experience, steadiness and consistency of purpose and ability to see and plan ahead, all of which we would hope to gain with age, but unfortunately do not always do so: and if we do gain them, we do not do so in the way we gain grey hair and wrinkles, merely by staying alive long enough. As Mill himself points out

"the mental and the moral, like the muscular powers are improved only by being used." (3)

and presumably this is as true for children as it is for adults. No-one could seriously claim that clear judgment, common sense, rationality, knowledge, experience and a sense of purpose descend on people on their twenty-first or eighteenth birthdays, or even that they finally spring into flower at that time fully operational at last after years of gradual development. Anyone, if pressed, would have to admit that some children are more rational knowledgeable and purposeful than some adults. What follows, then, is that if it is on the basis of ignorance, irrationality and inexperience that we decide whether a person needs paternalistic treatment we cannot maintain a rigid distinction between adults and children in this matter.

It would be wrong to suggest that all who believe paternalism for adults is not justified are unaware of any contradictions in their position. Schrag, for example, examines the common intuition that paternalism is justified for children and not adults and tries to explain the inconsistency. In an attempt to make us aware of our unexamined assumptions about the rightness of paternalism for

children and its wrongness for adults, Schrag invents a society called the Namuh. In this society the strong intelligent knowledgeable Tluda control the weak ignorant Dlihc, meting out arbitrary punishments and, though claiming to love them and be concerned for the welfare, restricting their freedom. He says

"Any such hierarchically ordered society would be universally condemned by almost every writer on ethics since Kant," (4)

yet this (with the names reversed) is our society.

Schrag is very clear about the difficulties of our society's attitude to paternalism. He considers whether children, as a group, are different to adults, as a group, in ways which are relevant to their different treatment. He takes all the differences which are usually suggested, plus a few more, considers them as criteria for the justification of paternalism for children and finds them all unsatisfactory.

If we take linguistic competence as the difference between children and adults, then the age of change over is nearer six than eighteen; if the difference is sexual maturity, then the change comes in the early teens; if it is the attainment of some intellectual standard (perhaps Piaget's formal operations) then some children will qualify early and some adults not at all. If ability to maintain oneself is taken to be the relevant characteristic, then some children would be quite capable of doing this, whereas some disabled people would not and would, therefore, be legitimate targets for paternalism. However, Schrag claims this would be unacceptable because although disabled adults may require some assistance this does not entail that they need to be coerced in their own interests. Finally, he argues, if we try to justify paternalism on the utilitarian grounds that it will make children happier, then we must still explain why this would not justify paternalism for adults also. What Schrag wants, but cannot find is a rationale for paternalism that will confirm our present beliefs and arrangements. He wants to find a distinction between children and adults that will

justify paternalism for the former and not the latter, and he cannot find it, but instead of concluding that paternalism is, in principle as acceptable or unacceptable for children as it is for adults and for the same reasons, he comes out in favour of a distinction he has shown to be insecurely based.

Schrag says we have to choose between two views - either that there is a clear distinction between children and adults or that there is not. Having shown that there is not, he then opts for the view that there is because, he claims, this is essential if we are to maintain that paternalism for adults is wrong. The second, gradualist, view he says contains the danger of justifying paternalism for adults and so we must avoid it. It is unacceptable to show a position to be untenable, as he does, and then choose to hold it for no other reason than that he dislikes the implication of what he says is the only alternative. He says

"Perhaps some will consider this decision to support a kind of 'noble lie', but if so it is not one in which a few deceive the masses for their own good, but rather one in which we all believe for our own good." (5)

Leaving aside the fact that many children do not believe it, (but perhaps Schrag does not consider them part of 'us all'), it is still not a noble lie. It is a convenient belief, untenable when examined, which enables adults to maintain their fantasies of self-sufficiency, their power and their assumption of superiority over the younger members of society.

According to Scarre, Schrag is wrong to look for a rationale for allowing some paternalism for children and none at all for adults. Scarre claims that

"a fair criterion of justified paternalism will refer to some feature or features of person which will in principle be capable of being possessed by both children and adults, though it will in practice be possessed by far more of the former than the latter." (6)

He claims that Schrag overemphasises the importance of liberty for adults and therefore is unwilling to let anything count as a justification for paternalism for them. In this, Scarre

is surely correct, as he is in his identification of what would constitute a fair criterion of justified paternalism. Where he is wrong, I suggest, is in identifying certain human characteristics - those which he says render paternalism unjustified - as adult characteristics, when in fact they are possessed by children as well.

According to Scarre

"children are inexperienced in the ways of the world and are incapable of forming life-plans or systematic purposes; indeed the capacity to form coherent purposes and the development of the will-power to stick by them are part of what distinguishes adults from children." (7)

However, inexperience of the ways of the world is a vague expression and too inexact a concept for us to base a justification of paternalism on it. Unarguably children have not been around as long as adults and so are likely to be relatively inexperienced compared with adults, but so is a person of twenty-five likely to be relatively inexperienced compared with a person of sixty. Relative lack of experience cannot justify paternalism, then, or it would be justified for all but the elderly. It is true that we gain experience as we grow older but we do not do so uniformly, and as a teacher of young children I am frequently surprised at what does and what does not fall within their experience. Some children, at quite a young age, have met and coped successfully with situations that I did not encounter until years later - if at all. Certainly, inexperience of particular circumstances is a factor which should be taken into account when paternalism is considered. A child with no experience of the dangers of tides and off-shore winds, for example, and unable to understand even when told about them, should not be let loose on a windy sea on a lilo. However, that is an example of particular inexperience justifying a particular instance of paternalism. It is not the case that children's inexperience justifies generalised paternalism towards them. If children have not the experience or understanding to cope with traffic or electricity then they need to be protected from them; if

they are inexperienced in managing money or making decisions about their school work then they will need help, but, as was stressed in the chapter on children's rights, they are not a separate class of beings who are always in need of adult direction and subject to adult authority. If inexperience is a handicap to be overcome, then adults' responsibility towards children is not only to protect them from the consequences of their inexperience, but also to help them gain the important experience they need.

Despite the admitted relative inexperience of the young, I do not think Scarre is right to say they are unable to form life-plans and systematic purposes. Some children decide when quite young what job they want to do when they grow up, and work steadily towards the realisation of their ambition. Many children, when they do have a chance to plan and control some area of their lives, do it carefully and sensibly: not always, of course, but then nor do we. If children have no life-plans and systematic purposes then those adults responsible for their welfare will, until that situation changes, have the duty to make plans for them: they will also have the duty to help bring about the change, so that the children are able to form their own plans.

Another characteristic which Scarre takes to be the prerogative of adults is love of freedom. He rejects Schrag's analogy of the Tluda and Dlihc because he says it misleads us into thinking of the downtrodden Dlihc as possessing our own adult love of freedom, whereas really they are children and therefore quite different. Scarre gives what he takes to be an example of this difference when he says that we cannot force an adult alcoholic to dry out because this would be imposing our plans on him in place of his own and would thus be an insult. However, he says

"children do not have systems of purposes of their own, so it does not infringe their rights to intervene on their behalf when their irrationality threatens their well-being.
(8)

This is not an explanation of why paternalism is justified for children but a set of assertions about their nature which he does not back up and with which I disagree strongly. From my observation and memory I would argue that children often do have systems of purposes of their own and are affronted by the restriction of their freedom by powerful adults. According to Scarre's view an eleven year old child may want to be a doctor or gymnast and may work systematically towards that end for years, but s/he may justifiably be coerced because "children do not have systems of purposes of their own." An adult alcoholic, on the other hand, may drift aimlessly doing whatever may be counterproductive to his/her stated aims, yet s/he may not justifiably be coerced because s/he is an adult and adults are insulted and their rights infringed if we impose our plans on them. I wonder how these propositions might be falsified. What would a child or an adult have to do to destroy Scarre's belief that the latter has coherent purposes and will-power and the former has not?

Empirical evidence seems to show that children do share the adult's love of freedom. There can be few children who read "Swallows and Amazons" without envying the Walkers their anti-paternalist father when he sanctions the sailing holiday with the telegram "BETTER DROWNED THAN DUFFERS IF NOT DUFFERS WON'T DROWN" (9), (and few parents who would not prefer living duffers to dead tributes to anti-paternalism!) Children's books are full of stories of children whose parents are conveniently dead, missing, absent-minded or amazingly understanding in allowing their children the freedom to follow up the exciting possibilities that present themselves, and the fact that these are so popular would suggest that, in their fantasies at least, children value the freedom to do things for themselves without parental interference. In fact as well as fiction, children do have purposes and plans of their own, want very much to be able to carry them out and are sometimes affronted by adult power

over them. It is because we have already decided that we will treat them as if this were not so that we dismiss their plans, their desires, their dignity and sense of worth as individuals as less important than our own, and we set up a false distinction between us, the adults, who value freedom and whose plans and purposes must be respected, and children who do not share those feelings.

Paternalism is always something of an affront: it is so from the first time we try to assert our own wishes as infants (and, for our own good, are not allowed to succeed) until the day we die in the nice safe Home we are moved to because our own home is deemed to be unsuitable. We should admit that and then argue that it is sometimes better to insult, affront or impose our will on others (adults and children) than let them be killed, cheated or exploited. Paternalism is not ideal: it is always second best to autonomy. We would much rather explain to young children why it is not a good idea for them to put their fingers into an electric socket, and we would prefer that walking across the park at night was so safe that we did not have to forbid young teenagers to do it, but we cannot organise all the circumstances of our lives so that paternalism is never necessary - either for children or adults. When paternalism for children is necessary and right it is so not because children's hurt feelings, individual wishes or self-respect are somehow less real or less important than those of adults, but for the same reasons that it is sometimes justified for adults. The same factors have to be considered: whether the original decision or desire is rational, made from ignorance or knowledge, will enhance or restrict future freedom, is consistent with other aims (especially valued long-term ends), is likely to result in harm, is considered particularly valuable or important, and whether the paternalism is likely to be approved subsequently, is likely to be successful and is the only practicable way of achieving its object. Paternalism for children is justified (when it is justified)

on the same grounds as for adults - that they are unique persons with purposes and plans of their own and whose individuality we value, but for whose welfare we have some responsibility so that we cannot stand idly by and watch them come to harm.

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CHAPTER 10

COMPULSORY EDUCATION AND THE FREEDOM OF CHILDREN

Compulsory Education and the freedom of Children

Having argued that the restriction of children's freedom in their own interest is sometimes justified, I will turn now to the subject of compulsory education and consider whether it is a morally justifiable restriction of children's freedom on paternalistic, or any other grounds. As I have claimed throughout this dissertation, freedom is not an indivisible entity. There are many freedoms, some of which are more valuable than others and many of which are incompatible: the restriction of some freedoms can lead to an increase of freedom in other areas, and the restriction of the freedom of one person or group can lead to greater freedom for others. The important questions about compulsory education for me, then, concern whose freedoms and which freedoms are restricted, whether these are important and valued freedoms, whether their loss is compensated for by a gain in more valuable freedoms or other goods, and whether the restriction is justified. However, as it has been denied that compulsory education is a restriction of freedom at all, I will consider that claim first before going on to the questions I consider more important and interesting.

The view that compulsory education restricts freedom has been challenged on the grounds that most people would do what is required by law anyway, and so the law does not affect their behaviour. Katz puts this view when objecting to the use of words 'compulsion' and 'coercion' in the context of school attendance laws. (1) He claims these are not coercive because most people do not obey them simply through fear of the consequences of disobedience, and that

"Compulsory school attendance laws codify an existing norm or standard" (2)

It is true that if we were planning to do anyway what the law says we must we do not *feel* coerced or oppressed, but, as I argued in Chapter 2, laws which close certain options to us restrict our freedom, and this remains true even if

we had no wish to choose what is forbidden, or even if we were unaware of its existence.

Katz also claims that to speak of the laws as forms of compulsion or coercion is to "de-emphasize" their legitimacy, but this is to fall into the trap of thinking that, as he disapproves of coercion and approves of both freedom and compulsory school attendance, the school attendance laws cannot be coercive. (3) Put simplistically the argument is this: freedom is good, restriction is bad, so, whenever we have a case of what appears to be a necessary or desirable restriction, then either the freedom is not really freedom or the restriction is not really a restriction. However, it is not the legitimacy or otherwise of a restriction, nor our approval or disapproval of it that makes it restrictive of freedom. Not all freedoms are desirable and not all restrictions are evil, and though there is a need to justify restrictions there is no need to explain them away or disguise them as something else. Laws can compel and coerce and still be legitimate.

It has been suggested that although laws compel they do not restrict children's freedom because children lack the capacity for freedom. Freedom, according to this view, is something we achieve when we have certain abilities and as children lack those abilities and cannot achieve freedom they cannot be deprived of it. Locke has been accused of holding this view by Gardner (4) who quotes him as saying that man's freedom is 'grounded in his reason' and that to

"turn him loose...before he has reason to guide him is not allowing him...to be free." (5)

This suggests that reason is necessary for freedom and that without reason there can be no liberty. Gardner criticises this thesis, not on the grounds that children do have reason but because

"the amoral, the untutored, those with under-developed physiques and intellects and those whose powers have not been liberated for the common good, can be free from many constraints and impediments and free to do many things." (6) Freedom, he says, is not something we achieve.

Gardner is right to draw attention to the basic freedom of not being pushed around, a freedom which all who are reasonably aware of what is happening to them may enjoy, but mistaken to assume that this is the only, or only important, freedom. As was argued in Chapter 2, exercising freedom (as opposed to simply not being coerced) implies choosing between alternatives, and in order to choose we must have an idea of what appears to us to be a good, some knowledge of relevant facts, and the ability to reason. Without these we do not choose between alternatives, but merely drift or plump for one course of action rather than another. However, as has been stressed previously, there are many different freedoms. It is mistaken to claim that, as rational thought is required for the exercise of free choice, we are free only when rationally choosing; and it is equally mistaken to deny that the exercise of some freedoms requires rationality and knowledge of desired ends and of means. Not all of the many different freedoms are compatible, and it is possible to be deprived of freedom in one area and thereby enjoy it in another. This, I suggest, is what Locke claimed happens when parents educate their children to become reasonable adults, for what Locke actually said was

"The freedom of Man and Liberty of acting according to his own Will is grounded on his having Reason...To turn him loose to an unrestrain'd Liberty, before he has Reason to guide him, is not allowing him the privilege of his Nature, to be free."(7)

The fuller quotation shows that Locke contrasts two types of freedom: the freedom of acting according to his own will, which depends on having reason, and unrestrained liberty which does not. Locke, then, does accept that children's liberty is restricted in certain ways by their parents, but he believes that a less valuable liberty is given up for a more valuable one.

Compulsory education, restricting freedom as it does, is vulnerable to criticism on three different counts: firstly, there is Gardner's criticism that it is a restriction of

freedom and all restrictions of freedom are wrong; secondly that though compulsion may be justified in order to achieve certain valuable ends, the ends of compulsory schooling are not valuable; and thirdly, that though the ends may be valuable they are not achieved. For those who hold the first view, that all restrictions of freedom are wrong, to admit that compulsory education restricts freedom is to condemn it. Gardner claims that

"to a libertarian compulsory education is evil in itself; whatever its benefits he will be under a prima facie obligation to do away with it." (8)

This exemplifies the mistaken view that freedom is one thing, always valuable, and that restrictions of freedom are necessarily wrong whatever good may come from them. Gardner holds that

"all restraints are evil in themselves" (9)

and yet, inconsistently, he criticises Dworkin for being prepared to sacrifice justice for freedom. (10) If justice should not be sacrificed for freedom, and it is not always possible to have both, then presumably it is sometimes necessary to restrict freedom to promote justice. Gardner does not explain how a necessary restriction which promotes a valued end such as justice can be evil in itself. Gardner is right to say that

"compulsory education needs justifying precisely because it is compulsory" (11)

but he needs to explain how something evil in itself which restricts something valuable in itself can possibly be justified.

Even if one accepts, as most of us do, that it is sometimes right to restrict freedom in order to achieve other valued ends, there will be disagreement about which ends are sufficiently valuable to warrant restrictions and which freedoms are too valuable to be given up. Is the capture of criminals valuable enough to allow the police greater powers to restrict the freedom of those who may be innocent? Is the raising of the living standards of its members sufficiently important for Trade Unions to be allowed

to introduce a closed shop? Do the benefits of educating all our children outweigh the loss of liberty that is involved in requiring them to attend school? Such questions of value are very important, not simply so that conclusions can be reached, but because the working out of problems of value is part of life as members of a community. The question of whether the freedom to act according to reason as an adult is incompatible with unrestrained liberty for children, and, if so, which is the more valuable is a particularly difficult question because the unrestrained children, if irrational, cannot judge the value of the education they have not had, while rational adults cannot throw off their rationality and recapture their pre-educated selves. The discussion will not be helped, however, by the insistence that either of these two freedoms is not really a freedom at all. However, as it is necessary to have certain skills and knowledge in order to take part in the debates about which liberties and other goods are more valuable, and these discussions are part of our life as social beings, we cannot decide in favour of unrestrained liberty for children. Education in a democracy should have as one of its aims that all should be educated to be able to participate fully in their society - to make personal decisions and choices as individuals and to play their part in democratic institutions and decision-making. As Pat White says

"However much ... a democratic society values freedom and wishes to allow individuals to pursue their own concerns without interference... it cannot refrain from 'interfering' through its appropriate authorities, to ensure that children get an adequate political education." (12)

John White also claims that we are justified in restricting children's present freedom for their future benefit, but he emphasises the value of freedom to choose a way of life as individuals, rather than to participate in joint decision-making. He argues that we cannot know what any person will want to do, or what his conception of the good will be, and so

"The least harmful course we can follow is to equip him, as far as possible, for the ideal situation - to let him

determine himself what the Good shall be for him. To do this we must ensure, (a) that he knows about as many activities or ways of life as possible which he may want to choose for their own sake, and (b) that he is able to reflect on priorities among them from the point of view not only of the present moment but as far as possible of his life as a whole." (13)

In order to approach this ideal situation, and teach what is necessary in the most economical way, White proposes that the curriculum be based on two categories of activities: firstly those which it is necessary to engage in before they can be understood, and secondly, those which may be understood without being engaged in. The first should be taught compulsorily in school, while children should be taught about the second. To put it briefly, in order to be able to choose whether we want to be Mathematicians or not we must be compelled learn Mathematics, because it is impossible to understand what is involved without doing it. However, the category two activities, which can be understood, so to speak, from the side-lines, should not be part of the compulsory curriculum. All that is necessary is that we should be taught enough about them to know whether we would choose to do them.

My first criticism of White's rational curriculum is concerned with learning about category two activities. White rightly says that we can, as adults, understand something of many activities without engaging in them. However, I believe that for primary school children the distinction between categories one and two would not be so clear. White's curriculum does not seem to be planned to take into account the way young children learn. I could certainly tell my Infant class that yellow and red paint will make orange, that plants need light, or that the path is twenty metres long. But firstly they would not listen, and secondly they would not understand. It is in mixing the colours, comparing the straggly yellow seedlings from the dark cupboard with the healthy green ones from the windowledge, and laying the metre sticks along the path that they come to understand pieces of information that an older person could assimilate

through reading or being told.

Even though adults can understand category two activities without engaging in them, White does not show that we can understand enough about them to know why people enjoy them so much. I can know what bird-watching, or chess or scuba diving are without having any idea of their own particular joys and satisfactions, and without that knowledge I am singularly ill-equipped to sit back at the end of my schooling and decide which of those activities will fill my week-ends. If I take to any of them, it is much more likely to be because somebody I know enthuses about them, and I have a go, and gain sufficient pleasure, intrinsic or extrinsic, to want to continue. (There is no need for the pleasure to be intrinsic, or for the activity to be worthwhile 'in its own right'. That it is enjoyed at all is surely a sufficiently good reason to choose to do it.) Again, although adults and older children may be able to understand a category two activity without practising it, we may need many years of practice before we can do it properly. If we were to understand an activity first, then decide to do it, and then learn to do it, it might be too late to do it properly. Taking up skiing at the age of 35 when I understood what it was about and had decided that I would like to try it was very enjoyable, but not nearly such a good way of becoming a competent skier as whizzing around on the slopes from the age of two, like the Austrian children that I met. White's rational curriculum fails to take account of the fact that some skills and activities have to be engaged in from an early age - not so that they may be understood, but so that they can be done properly.

However, my main criticism of White's argument is that, while agreeing that education should prepare children for making choices as adults, and should help them to be informed about the substance of those choices, I would argue there is something unrealistic about a curriculum planned to

achieve that end alone. White acknowledges that what he calls the ideal situation, of knowing about as many activities and ways of life as possible, and being able to reflect on priorities, is unrealizable, but I would question its desirability as well as its feasibility. Without wanting my life or that of my children to be either irrational or non-rational, I would not want it to be quite as pre-planned and future-orientated as White seems to suggest it should. White's model depicts life in stages: firstly learning category one activities, and learning about category two activities as a preparation for the future, then choosing between them all and choosing a way of life, and then living. My criticism is not that this model neglects the element of chance in life, and the things over which we have no control, (White accepts that we cannot have complete autonomy (14)), but that it does not give sufficient value to children's present lives, or to the freedom they have and the choices that they make while they are still children. As was argued in the chapter on paternalism, we cannot keep our options open indefinitely for fear of losing opportunities later. The choice to do one thing now will inevitably preclude the possibility of doing something else, and while educationalists and parents must try to ensure that important options are not closed early, they would be as wrong to concentrate exclusively on the future, as the extreme child-centred lobby are to neglect it. Education is necessarily forward looking, and should be about broadening outlook and presenting new possibilities, but to prefer to teach children about a large number of category two activities by showing them films, rather than teach them a smaller number by taking part with a committed enthusiast, is to neglect the importance of an interesting present.

White justifies compulsion in education on the grounds that we are right to restrict children's freedom now in order to increase their autonomy later. (15) There are those, however, who believe that the aim of compulsory

education is to create uniformity of opinion and life-style, rather than to enable people to make reasoned choices as individuals and a worthwhile contribution to joint decisions, and who criticise it on the grounds that freedom is restricted not for a valued end but for something undesirable. Rothbard, for example, argues that state schools have played a continuing role in suppressing religious dissent and creating uniformity.(16) From Martin Luther to the anti-Catholic Ku Klux Klan, via various socialists and progressives, supporters of state schooling have wanted to impose a particular and uniform ideology, he claims. Rothbard does not appear to be concerned about the morality of individuals or groups forcing their own children to accept particular beliefs, nor to consider that children may have greater freedom to choose their own values and life-style while attending and after attending a state school than if they were educated according to the beliefs of their parents.

It cannot be denied that compulsory schooling has been used to promote particular ideologies, but what can be denied is that the imposition of ideas and values on children is greater in a society with compulsory education than one without it. Societies cannot avoid passing on ideas to their children, but it is possible to try to see that they treat ideas critically, and compulsion may be the only way to ensure that all children are taught to do this. Libertarians might be more successful in promoting genuine liberty if they tried to ensure that state schools teach children to adopt a critical attitude to a variety of ideas, rather than risk leaving children to learn nothing but their parents' own beliefs or to be at the mercy of any and every persuasive voice.

Critics of compulsory schooling (and of compulsory education and compulsory state education) can be found amongst those who hold widely differing views about children's freedom. Some are concerned to liberate children from the oppression of school, while the chief or only complaint of

of others is that it takes away the freedom of parents to decide the content, nature and extent of their children's education. As the law compels parents to send their children to school (or see that they are educated to an acceptable standard elsewhere) and as it is parents who will eventually be taken to court if they fail to do this, compulsory education is sometimes considered to be a restriction of the freedom of parents rather than children. In fact both are affected, for if the law compels parents to compel their children, then, clearly, children's freedom is restricted, albeit indirectly. However, it should be remembered that most children would not be given the choice of whether or not to go to school even if attendance there were not compulsory, for this choice would be made for them and enforced by their parents. Shakespeare's unwilling schoolboy creeping to his books was no freer to decide whether to go to school than his modern counterpart, despite the difference in law, and the freedom allowed him during lesson time would have been much less. Unless the law making school attendance compulsory was replaced by one which protected the wishes of children and gave preference to them over those of their parents (as Holt tentatively suggests that it should (17)), then the effective freedom of most children over the decision of whether they should go to school would be no greater without compulsory education than with it.

For some of the most severe critics of compulsory education this would not be seen as a problem, either because they do not value children's freedom or because they do not think about it at all, and both of these attitudes can be found in the essays in Rickenbacker's book "12 Year Sentence". (18) On the back of this book are eight examples of the problems of "people caught in the toils of the truancy laws" none of which is concerned with the freedom or lack of it of children. Five refer to the problem of parents who wish their children to be taught to share their own religious beliefs, and three are about inferior schools.

Children are mentioned only as people that 'you' (the parent) want to do something to while 'they' (the state) try to stop you. Whether the something that 'you' want to do is right or not is not questioned, for it is assumed that if you are a parent it is your right to decide, and that this is one of the most valuable freedoms that exists, more valuable than freedom for children or than the freedom for all concerned members of a democratic society to take part in the decisions about the sort of education that should be provided for the young.

What is being argued in this book is for greater freedom for parents to make decisions about what their children shall do, and less freedom for the state, but it is argued simply in the name of freedom. Rickenbacker claims to be against compulsion, saying

"To many who support compulsory schooling, the use of compulsion is necessary to bring up the young to respect and practise the virtues and customs of society. To the critics of compulsory schooling it is precisely this coercive intrusion into the life and mind of the individual that represents the most damnable feature of compulsory schooling." (19)

However, like Rothbard, he ignores the fact that it is not only schools that intrude into the lives and minds of children, and that children of parents who belong to the diverse groups he mentions are also brought up to respect and practise the virtues and customs of their particular group. If this is coercive then it is suffered by all children in every society, and if it is wrong then Rickenbacker should be as worried about parental intrusion as he is about compulsory schooling.

There is, in several of the essays in Rickenbacker's book, a confusion between freedom and cultural diversity. For example, the introduction to one essay says of its writer

"He discovers a heartening - but shaky - trend towards diversity, freedom and the sovereignty of parents," (20)

which suggests, quite wrongly, that freedom and the sovereignty of parents go together, along with diversity. While the possibility of diversity is necessary for freedom

it is not sufficient, for if all the groups in our society were to keep to themselves and educate their children to be like themselves there would be diversity of life-styles but not more freedom. For freedom to exist it is necessary that people are able to choose between some of the many different beliefs and ways of living that exist. It is a matter of argument as to how many alternatives should be available for freedom to exist. John White suggests that children should learn about as many different activities as possible (21) but I would argue that it may be better for children to gain a deeper acquaintance with a few activities than have a superficial knowledge of many. I do not think that the fact that a boy who is brought up in St. Helens will be immersed in Rugby League, a Liverpudlian in football, a Barbadian in cricket and an American in baseball, basketball or American football, rather than all of them being able to choose from all of the sports, is an important restriction of their liberty. We grow up within a community, with its own customs, and it is not necessary for our freedom for us to have all the possible activities enjoyed by other communities laid before us as if on a supermarket shelf. It would be a restriction of liberty, however, and an important one, if we were prevented from learning about or practising some possible alternative activities or ways of life. A girl from any of the above communities, for example, who was not allowed to play any of the games mentioned, or who could not play any games because the available funds had been used exclusively for boys' games, would have her freedom restricted. So would children who were prevented from learning about the games, or, more importantly, the beliefs and ways of life of other communities within their society. For many children, schools show the possibilities of different ways of life that their parents are unable or unwilling to reveal. However, for those who oppose compulsory education in the name of the sovereignty of the parent it is the chance that children will be exposed to other ideas and come to disagree with

their parents, that they dislike and wish to avoid. The critics who take this view are really critics of state education rather than compulsory education, for they support the existence of private and religious schools and hold them up as an example of freedom. If we consider what goes on inside these schools, however, rather than concentrate on the fact of their existence, it is far from obvious that they increase freedom.

There is one contributor to this collection of essays who says

"it might be a good idea to ask kids what they think" (22) but this suggestion is not pursued. Instead the author, Baker, returns to the subject of the freedom of parents, saying, of the Amish community,

"What the Amish fear most is that their children, particularly teenagers, will be lured away from their culture by the temptations abounding in the modern consolidated school." (23)

It is understandable that they have this fear. I have similar fears myself when I see my own children exposed to pervasive and persuasive views that I believe to be wrong and dangerous. This is understandable parental concern and, as I have argued, there is a case to be made for adults protecting children from danger. What cannot be done, I maintain, is for this case to be made in the name of liberty. Underlying the concern about the restriction of parents' liberty is not a simple love of liberty but the belief that parents' freedom is more valuable than any benefits to their own children, to other children or to society as a whole that might accrue from universal compulsory education, including the possible benefit of increased and enhanced freedom for their children in the future.

A more impressive line of criticism comes from those who are concerned that schools frequently fail to achieve their aim of educating children. Such critics may concede that what the educators wish to achieve is valuable, but they believe it has not been achieved and, indeed, cannot be

achieved by compulsion. As Goodman, one of the foremost critics of compulsory education, says

"since schooling undertakes to be compulsory must it not continually review its claim to be useful," (24)

and certainly if children's freedom is restricted on the grounds that they need to be taught particular skills and knowledge, then for paternalistic intervention to be justified it is necessary that they do learn them. Making children spend a large part of their time in the classroom is not a self-evidently acceptable practice, and if it is to be justified on the grounds that it achieves certain results we should be ever-watchful to ensure that it does achieve them (or achieves them better than possible alternative methods.) The parenthesis is reasonable, for it is not necessary to show that schools are perfect and that all children know all they need to know for the present system to be justified. What is required is that the system achieves or could achieve its ends better than the alternatives now on offer or possible in the foreseeable future. The claim that this is so is rejected by those who hold that compulsion and education are incompatible.

The belief that compulsion gets in the way of good education is held both by 'deschoolers' and those who would prefer schools to remain but for attendance to be voluntary. Reimer, for example, wants to 'deschool' society completely so that individuals would be in charge of their own education, (25) and would, thereby, become more powerful and less liable to exploitation. He believes that everyone should find their own 'skill-models' from a directory and then make a contract to be taught what they wish to learn. The major criticism of this approach is that people need to be skilful already in order to use it successfully. Using directories and making contracts are not innate abilities, and it is not unduly pessimistic to assume that the free market Reimer envisages would, like other free markets, be one which the more powerful and knowledgeable members of society would be able to use for their own benefit and in which the less

experienced would be taken for a ride. Encyclopaedia salesmen have already demonstrated that there is a lucrative trade to be done with parents who desire to help their children but are unsure how best to do so. Doubtless there would be many more enterprising salesmen eager to exploit concerned but unsure parents and their children in a society which saw education as a product to be advertised and sold, while the more clued-in and affluent parents were ensuring their children had an education which would enable them to maintain positions of power. (26)

In addition to the parents who may not know the best way to help their children, there are those who are unwilling to do so. These are in a minority but the consequences of leaving the education of their children entirely in their hands should be considered seriously, and one needs to ask what would happen to these children if they were left to find their own skill-models. Reimer says

"Perhaps the most important thing that individuals can do is to take back their responsibility for the education of their children" (27)

but the education of children is not simply the responsibility of individuals. Reimer does not say what would happen to the children of those parents who failed to do this; nor does he consider that the consequence of free individuals making contracts to teach and learn might be to put more and not less power into the hands of teachers. At the moment teachers in state schools cannot choose their pupils any more than pupils can choose their teachers, and while Reimer considers the possible benefits of getting rid of bad teachers because no-one would want to employ them, he does not say what would happen to the less attractive pupils. According to the ideology of the free market I suppose they would be so keen to enrol with the best and most favoured teachers that they would work hard and never mess about in class again. What is more likely to happen, I suggest, is that they would be stuck with the worst teachers. This can be seen to happen at the moment in the

private education system, with the most popular private schools able to choose their pupils and name their own terms while the less able or less amenable children have to go elsewhere. Reimer's concern for children whose freedom is restricted is one I share, but although the removal of some restrictions would necessarily increase some freedoms, I see no reason to suppose that these would be valuable and important freedoms, or that there would be an overall increase in people's freedom from exploitation and freedom to direct their own lives.

The argument that if the education of children were left to themselves and their parents some children would suffer, and that it is better, therefore, to have compulsory education for all to protect those who might be at risk has been criticised as snobbish. It is always the other parents who would be unable or unwilling to organise their children's education, it is said - never the person arguing for compulsory education. However, this criticism might be levelled equally at those who support any law they have no urge to break. For example, as it is not the legal prohibition against mugging old ladies that holds me back from going on the rampage, is it snobbish to support such a law on the grounds that it helps protect those who need it and check those who might otherwise engage in this activity? If this is the case then, without snobbishness, we can support only those laws which proscribe the particular forms of anti-social behaviour which tempt us. More importantly, however, the charge of snobbishness or elitism, whether fair or not, could be levelled only at those who would agree that the education of children is the responsibility of individual parents, but fear some might not carry it out. My claim is that the education and welfare of the younger members of a society is a matter of concern for and the responsibility of the whole of that society, and not simply, as deschoolers and traditional upholders of the rights of parents seem to believe, of individual parents. This

responsibility will not be carried out satisfactorily if we assume that justice for children lies in treating them either as competent individualists in a society of other individualists who are all capable of fighting for their own interests, or as beings whose upbringing and education is the business of no-one but their parents.

What Kleinig calls the 'protectionist' argument for compulsory schooling (28) - that education has to be compulsory in order to protect those children whose parents would otherwise neglect it - has also been criticised on the grounds that as not all children need protection (either from their parents' irresponsibility or from themselves and their own ignorance and inexperience) it is unfair to restrict the freedom of all and make them suffer for the defects of the few. Kleinig says

"It is all very well to intervene in cases of manifest abuse and neglect. But such interventions do not need to take the form of compulsory schooling and certainly not compulsory schooling for all. Not all children need protection from their parents." (29)

Krimerman takes a similar view and considers the possibility of having schools that would operate much as our hospitals do today.

"People would be committed into them temporarily, under extraordinary circumstances, and for the most part voluntarily." (30)

Kleinig appears to have physical neglect in mind, whereas Krimerman is considering some failure in rationality which needs treatment, but both advocate state intervention only in cases of proven need, because this is less of an intrusion into the individual's liberty than compulsion for all. There are, I believe, several weaknesses in their arguments.

Firstly, Krimerman's suggestion that schools could operate as hospitals do, treating people occasionally, voluntarily and for limited periods, does not take account of the very real differences between being ill and being in need of education. Being ill is abnormal, not usually a matter of dispute, and generally we know when we are ill

and desire to do what is necessary to get better. Being ignorant, inexperienced or relatively irrational however, is, at a certain stage of our lives, the common human condition, but one of which we may not be fully aware at the time, nor may we know best how to rectify the matter if we do recognise it. Krimerman seems to suggest that if parents do not educate their children satisfactorily and their deficiency becomes apparent, then the children would be subject to compulsory education until the wrong is put right, but the administration of what he calls 'sporadic educational intervention' would create greater unhappiness, I believe, than our present system of universal compulsion, and would make the 11 Plus and the taking of children into care seem almost trouble free by comparison.

Neither the diagnosis nor the cure of irrationality is as simple as that of chicken pox, and it would be hard if not impossible for decisions about children and their parents to be free from cultural bias and value judgments. It would be impossible, also, to avoid the implication of moral condemnation of both parents and children when compulsory education was deemed to be necessary, and decisions which would have such a detrimental effect on the self-images of the people involved would undoubtedly be criticised and challenged in courts of appeal. It is hard to see whose freedom would be increased or who would benefit in any other way: the children whose parents chose to send them to school or keep them at home would have as little say in the matter as children usually do, those deemed to be in need of sporadic educational intervention would be subject to (or sentenced to) compulsory schooling, and presumably all children would be screened in some way to discover those in need of schooling. I believe the idea of a safety net to catch the children whose parents do not educate them would cause even more distress and be more unjust than a system which insists on education for all. However, this, like the belief that children would learn what

they need to know in a non-compulsory or self-directed education system, cannot be verified or falsified without experiments on the people whose education and welfare is our concern.

Gardner considers a slightly different, stricter protectionist argument which is to do with the protection of children, not from the consequences of having parents who cannot advise on, say, the best way of becoming a metallurgist, but on protection from physical harm. (31) This argument is based on the distinction between interfering with a person to prevent harm to themselves (which even Mill said was permissible in certain circumstances) and interfering to promote their good. (32) Prevention of harm could be said to require that children learn to read, Gardner claims, but

"it is not an argument for the analysis of poetry or writing free verse or for studying Shakespeare." (33)

John White uses the argument that prevention from harm justifies compulsion, (34) but he interprets 'harm' rather loosely, saying

"If children were left free not to have to speak, study mathematics, physics, philosophy or contemplate works of art, then this might well harm them, since they might never come to know whole areas of possible wants." (35)

For White, to be ignorant of any of the category one activities that one might wish to choose to pursue is to be harmed, but this is as mistaken, I suggest, as saying that to be deprived of any of the foods that a person might choose to eat is to go hungry. For White does not claim that physics, mathematics, art appreciation etc. are all essential to a fully autonomous life. If he could show this, then his claim that ignorance of them constitutes harm might be upheld, but as it is he is quite happy for children to learn maths and philosophy, say, and then drop them completely having realised that they do not wish to engage in those activities, because the Good for them is music and poetry, or rugby and cricket. It is surely stretching the meaning of 'harm' to unacceptable lengths to count ignorance

of something that a person might have wanted to do, but did not, as harm for them.

White also refers to the possible harm to others if children are left ignorant of category one activities, for he considers that people who do not know of possible options and different ways of life may not be tolerant of those who choose differently from themselves. Therefore, he claims, it is in everyone's interest that all are taught to understand the category one activities and the different possible ways of life. I am unconvinced that someone who had learned something about an activity or way of life and then rejected it would necessarily be more tolerant of those who continued to pursue it than someone who knew nothing of it at all. However, my main disagreement with White's argument is that, having used a very wide interpretation of 'harm' with regard to category one activities, he excludes category two activities completely. If we are to justify compulsion in education on the grounds of preventing harm, then many category two activities must surely be included. More obvious harm is done both to the individual concerned and to others through ignorance of nutrition, or child-care, or first-aid, or the highway code, or car maintenance etc. than through ignorance of art appreciation. If "the principle of liberty may be overridden...to prevent harm both to the pupils themselves and to men in general" (36)

then many of the practical subjects that Make up White's category two activities will have to be included in a compulsory curriculum.

I have claimed that our responsibilities towards each other go beyond the mere prevention of harm, but even if this were not so, and even if it were easy to draw the line between preventing harm and promoting good, I do not believe schools could restrict themselves to teaching what is needed to prevent harm. We cannot teach children to reason, think critically or even read without getting them to reason, think critically or read about something, and that

'something' which is the subject matter will teach lessons of its own. We cannot separate the necessary skill from the 'something': we cannot legitimately extend children's language for an hour and then illegitimately get them to do leaf prints. It is while they pick the leaves, put on their aprons, mix their colours and set to work that their use of language can be extended. It would be possible, perhaps to have an English syllabus which started with reading the instructions on fireworks and the Government Health Warnings on cigarettes, went on to the list of additives in orange squash and finished with the submissions to a public enquiry on the building of a nuclear reactor. Such a syllabus, however, would neglect vast areas of human experience which, though not necessary to physical survival, children do need to understand if they are to be able to participate fully in their society. In addition, a curriculum based on harm-prevention would contain some of what is in children's interest to know, but it would be no more (and probably even less) likely to interest them than present curriculum.

It could be questioned whether it matters if children are bored if they are being protected from harm, but if they are being bored unnecessarily, and if, being bored they 'switch off' and are less likely to learn, and if boring schools are perceived as more oppressive than interesting ones, then it does matter. If we regretfully decide it is necessary to restrict children's freedom by compelling attendance at school, then we should compensate for that as far as we can by making their time there as interesting and pleasant as possible while still achieving the purpose. We cannot do either of these if we concentrate solely on contraception and the Green Cross Code, important though they are, and outlaw major parts of our culture such as music and fiction.

However, even if school is pleasant and interesting, if it is compulsory it will restrict children's freedom. The

suggestion that if children can choose what they do in school their liberty is not restricted (37) is rightly criticised by Gardner on the grounds that want-satisfaction is not the same as freedom, for if it were we could be free simply by not wanting what we could not have. (38) Gardner says

"Even if...pupils have their so-called free days, and their elective curriculum and want the options offered, some options, such as that of opting out of the whole enterprise and the range of alternatives for which this is necessary, are not available, hence the system interferes with freedom." (39)

This is so, but what Gardner appears to overlook is that we are never either completely free or totally enslaved, but may be more or less free. Having to go to school is one infringement of liberty, but, once there, having to study Maths, wear a tie and not talk in the dinner queue are additional restrictions. Being allowed to choose between activities and pursue one's own interests within a compulsory system is not complete freedom, any more than being educated by one's parents would be, but each is an example of limited freedom.

The subject of children's freedom within school will be considered in more detail in the next chapter. I wish now only to make the point that a compulsory system inevitably restricts children's freedom, though not necessarily more than the available alternatives, but that it need not be oppressive and that restrictions should be kept to as few as possible. Unless it can be shown that drugging children, (38) insisting they are immunised, (39) requiring attendance at religious or flag-saluting ceremonies, (40) beating them or simply teaching them badly are necessarily connected with compulsory education, then these are separate (though important) issues which do not effect the principle of whether a society is justified in ensuring that all its young members are educated. The practices of individual schools or education systems in any particular society should

not be taken as a criticism of compulsory education as such, any more than a defence of compulsion should be mistaken for satisfaction with our present system.

Much of the criticism of compulsory schooling is basically criticism of what is done in schools rather than of the principle of compulsion, but it is argued sometimes that compulsion and education are necessarily incompatible. Though it is possible to compel children to attend school, it is claimed, it is not possible to compel them to learn, for learning is something that we have to do for ourselves when we want to. It is true that no-one else can do our learning for us. Learning is never a passive process, for when we know and understand something - even if it is something we have been told or have read - we fit it into our existing framework of knowledge and actively make it our own. It is also true that when we are motivated and interested we learn more avidly. However, what follows from that is not that learning and compulsory school attendance are incompatible but that if we want children to learn more easily we have to motivate and interest them. Whether or not children are able to learn in a compulsory education system is a fact, and from the empirical evidence that there are many original and creative people who are products of such a system I conclude that compulsion and education are not incompatible. According to deschoolers and some other critics of compulsory education, children who are not made to go to school will learn what interests them and it seems to be assumed that what interests them is what they need to know. I question the belief that interest and need will coincide so conveniently. Reimer lists many things that people ought to know about the way society is organised and power distributed, (43) but though I would agree with him that these are important, I would argue that he is over-optimistic if he believes either that all children will want to learn them, or that this information will come their way in the free market he advocates.

Those who believe that children need only to be left alone in order to develop their talents are wrong on two counts. Firstly we have no reason to suppose that children left alone would blossom in this way. People are not like acorns which need only sun, water and space to grow into fine oaks: we need interaction with interested and interesting people.(44) Secondly children are not and will not be left alone. They will learn something from some-one, and it is the duty of adults to ensure they learn what is worthwhile and what they will need to know rather than what they chance upon or what it is some-one else's interest they should learn. To argue that children should be left free to decide what they want and need to know is to exhibit the naive liberal view of free choice which ignores the extent to which choices may be shaped, influenced or deliberately manipulated. If those who want children to understand their society and to be able to make choices both as individuals and as participants in a free society stand aside, then those who want to exploit or manipulate them will find the field free.

I have argued that the liberal view of human beings as individuals who come together only when it is in their interest to do so and have only the obligations they have chosen is a mistaken one. We are social beings whose responsibilities and obligations to our fellows, including caring for the young, exist whether we want them or not, and while parents undoubtedly do have responsibility for their children, they are not the only people who have. Children do not just belong to their parents and family, they are also young members of a wider community which has both an interest in and responsibility for the way they are educated. This is not a backdoor way of saying that children belong to the state instead of their parents. They do not 'belong' to anyone in the sense of being possessions, but they, like the rest of us, are social beings as well as individuals, and members of a wider community as well as members of a

family. Thus while the community has a responsibility to promote and protect children's best interests, the children, as members of the community are not just recipients of welfare but people with their own part to play, and contribution to make. Being educated is a child's current contribution to his/her society as well as being preparation for future participation.

I have argued previously that there is no good reason to limit the legitimate role of the state to repelling external threats and enforcing contracts, but that it extends to promoting good in other ways. Therefore it is reasonable to suggest that the state should be involved in the education of its younger members, both for their benefit and for the benefit of the wider community, and that it should not be left to chance or to individual parents to see that they learn what they need to know. All societies have some arrangement for the care and education of their young members and in all societies children are expected to learn and are not given the opportunity to opt out. Children must learn, just as adults must teach and care for them, and these are responsibilities that neither can shirk. What they learn should, in a free, democratic society be of concern to all, and a matter of public debate, as decisions about the sort of education we give our children affect the sort of society we have. If we value freedom we will want to ensure that all children are taught the necessary skills, attitudes and knowledge so that they too can make free choices, take part in the public decisions that affect all, and minimise the power that others are able to exercise over them. How their learning is organised should also be discussed. It might be that a non-compulsory education system could cater successfully for all children in a society in which power was more equally distributed than our own, and in which the freedom of parents to mould their children in their own image by denying them access to alternatives was not valued. Until that is achieved I would argue that, with

all the acknowledged faults of our present system, compulsory education goes some way towards minimising the difference in life chances between children whose parents are themselves educated and those who are not. Abolishing schools, or having them only for those children whose parents wanted them would not improve matters for the most disadvantaged children, nor would it make them, or any other children, more free. The major gain in freedom would be for parents who wished to be in sole control of decisions made on behalf of their own children. I have argued that this is not a freedom to be valued highly.

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interested or interesting.

CHAPTER 11

FREEDOM IN SCHOOLS

Freedom in schools

"I think it's right that we have to go, but it doesn't have to be such a dictatorship when we get there." David Chamberlin (12 years)

I have claimed that although restrictions of children's freedom are sometimes justified, this is not because children are inherently subject to adults' authority, or incapable of freedom or in some way less worthy of respect and consideration than adults. Restrictions of children's liberty are just as important as restrictions of adults' liberty and must be justified on broadly the same grounds and according to the same general criteria. I argued in the previous chapter that citizens of a democracy need to be educated in order to survive in, take part in, contribute to and benefit from their society, and a democracy needs educated citizens in order to continue to operate as a democracy. I concluded that a system of compulsory education was justified in principle, although the legitimacy of compulsory education does not entail either the right of adults to impose their own wishes on children, or justify the unlimited restriction of children's freedom.

In considering children's freedom in relation to their education the problem arises, not simply of deciding whether a compulsory education system is justifiable, but of deciding also to what extent we should restrict the freedom of children within the schools which we compel them to attend. These are not completely separate problems, for there is certainly a connection between what is done with children in school and the question of whether compulsory education is justified. If compulsion is justified on the grounds that it achieves certain results, then it must work towards the achievement of those results, and will not be justified if it does not go some way towards their achievement. It would not be right to keep children in schools, for example, on

the grounds that their freedom may justifiably be restricted in order that they may be taught what they need to know to take their places as members of a free, democratic society, if really they were being trained to be merely tractable and obedient wage-slaves or consumers. If present restriction is justified on the grounds that it will enhance future freedom, then the education provided must have this as one of its aims, and must work towards its realisation, for compulsion is never a good in itself and though it may be justified to achieve certain ends, other ends would not count as a justification for the restriction of freedom.

Having argued in the previous chapter that compulsory education is justifiable, I now wish to look more closely at the question of liberty within a compulsory education system, and to consider how schools might respect children's present rights of liberty while continuing to educate their pupils and prepare them for future freedom also. The question of children's political liberty to participate in the organisation of the school and the formulation of school rules will be considered in the final chapter on education and democracy. In this chapter I will consider two areas of freedom: academic freedom - the freedom of children to choose what to study (and what not to study), to direct their own learning, choose their own teachers and set their own academic standards; and personal freedom in areas such as those of dress, behaviour outside the classroom, and freedom of movement and expression within school.

The usual argument for academic freedom is part of Mill's argument for other forms of freedom of expression and argument - that it is necessary for the advancement of human knowledge and the discovery of truth. (1) This would appear not to apply to children, for though they may discover much at school, the 'discovery learning' they do there is not, nor is it meant to be, discovery of something which no-one else has ever thought of before, but discovery of knowledge

that is new to the child in a form that is more comprehensible and less easily forgotten. Until children have learned basic skills, standards of rationality and some factual knowledge they are most unlikely to advance human knowledge. If children are to have academic freedom at school, then, it must be on grounds other than those used to justify it at a more advanced level - that they are human beings with their own lives to lead who have the right to pursue their own interests.

I have argued that our justification for compelling children to attend school (or receive an equivalent education elsewhere) is that there are certain things they need to know in order to survive in our society, to become part of the community and play their part in it, and to be able to make reasoned choices as individuals. If this is the case then clearly it would be inconsistent to allow children complete academic or personal freedom when they are at school if this meant they did not learn all that had been thought important enough to justify their compulsory attendance. Among those who have attempted to extend the liberty of children in school, either in progressive schools, free schools or the state system, there is a divergence of opinion about whether children should have complete academic freedom, and this difference appears to be based on different interpretations of the purpose of schools. Almost alone of libertarian teachers A.S.Neill maintained the position of allowing children complete freedom to choose whether they attend any lessons or none - a position which sprang from his views both on the purpose of education and on the nature of the child.

Neill believed that the purpose of a school was to enable children to be happy. Unlike many of the other pioneers of the new school or progressive education movement he did not want simply to find less oppressive ways of teaching, or more subtle ways of socialising and controlling children, and bringing them to share the values of their

society or their teachers. He placed supreme importance on children being happy, and thought the way to make them so was to give them freedom. If they wanted to learn then they would do so, and if they did not then it was better for them to be happy as illiterate street sweepers. This view of the purpose of schools is inextricably linked to Neill's view of the nature of the child - neither of which I share. He said

"We set out to make a school in which we should allow children freedom to be themselves. In order to do this we had to renounce all discipline, all direction, all suggestion, all moral training, all religious instruction...All that is required was what we had - a complete belief in the child as a good, not an evil being...My view is that a child is innately wise and realistic. If left to himself without adult suggestion of any kind he will develop as far as he is capable of developing." (2)

Briefly, on the subject of happiness, I would argue that although it is a good it is not the only good, and even if it were, a school that made happiness its sole aim would still face a conflict between catering for children's present happiness or that of the future. The happiness of doing no lessons and learning nothing that is not of immediate appeal may preclude later satisfactions, and the freedom to stay away from lessons will then seem less valuable. We are brought back again and again to the problem of the relative value of different freedoms, and the conflict between Locke's 'unrestrain'd liberty' (3) or what Simone Weil calls

"an unconditional surrender to caprice"(4),

and the freedom of being able to make one's plans and capable of carrying them through. In her theoretical picture of a free society (5) Weil contrasts the freedom which little children would enjoy if parents did not impose any rules on them with the freedom of being able to order one's own actions. The former is to do with desire and its satisfaction, whereas the latter is concerned with thought and

purpose which can be translated into action. While accepting that the free society and the free man are unrealisable ideals, she says

"the absolutely free man would be he whose every action proceeded from a preliminary judgment concerning the end which he set himself, and the sequence of means suitable for attaining this end." (6)

It would be hard for a child to conceive of that kind of freedom without having had some stimulating interaction with adults, or to be able to use it without having certain skills that are not always learned incidentally.

As was argued in the previous chapter, children are not, as Neill believed, like plants which grow to their own particular pre-determined pattern unless their growth is stunted in some way. They may manage without adult dictation, and perhaps without adult direction, but Neill's assertion that they will develop their full potential without adult suggestion of any kind is false. For example, children who are trained as gymnasts, tennis players or violinists reach levels of competence that far exceed those of the untrained enthusiasts. Whether it is right to train children to such high levels in this way is debatable, but there can be no doubt that training for certain skills leads to greater achievement; that what one achieves must be within one's potential; and that, therefore, leaving children without adult suggestion of any kind will not enable them to go as far as they are able.

Again, as was argued in the previous chapter, however hard schools and teachers might try not to suggest anything to their pupils, children are surrounded by other influences. Even Summerhill children went to the cinema each week, home for the holidays, and probably read books and comics, and these outside influences would affect the inclinations that Neill considered to be innate. Neill admitted that the freedom of Summerhill worked best for the intelligent children, (7) for when they decided to work for external exams they were able to tackle the intensive work

required in a short time. It seems highly probable that these children had been exposed also to some adult suggestion - or at least some adult enthusiasm - perhaps from their parents, and that this had stimulated their intelligence as well as motivating them to want to pass their exams. For Neill, children without academic interests and girls who did not attend Maths or Physics lessons were simply expressing their own natures, and not only should not be forced to go but should not be encouraged either as

"it is an absurd curriculum that makes a prospective dressmaker study quadratic equations or Boyle's law." (8)

This is a deterministic view of children's potential and their future lives, and it does nothing to counteract the influence and expectations of the particular section of society in which the children grow up. If the interests which children are free to pursue as children, (which affect the choices they will be able to make as adults) are left entirely to them, they will be based on limited knowledge and experience and influenced by all the voices of persuasion except those of their teachers. As Dewey put it

"The suggestion upon which pupils act must...come from somewhere. It is impossible to understand that a suggestion from one who has a larger experience and a wider horizon should not be at least as valid as a suggestion arising from some more or less accidental source." (9)

I have often noticed that when young children without wide experience are given a completely free choice of activity at school they copy the first child who has an idea of what to do. However, if several suggestions for possible activities are sought by the teacher and considered by the children before the choice has to be made, then the children do not all end up doing the same thing. In such circumstances adult suggestion, or adult instigation, which might theoretically be thought to narrow the range of choice and limit freedom, in fact enlarges it. I would argue that an important part of the school curriculum should be geared to helping children to determine for themselves what they would like to do, what they need to know next and how to go about pursuing their individual investigations, but until

they are equipped with the necessary skills and knowledge for this they should not be allowed complete academic freedom. The freedom to choose what line of study to pursue and how best to pursue it is inappropriate for children whose intellectual skills are relatively underdeveloped and who have insufficient experience to know what choices are available.

In contrast to the philosophy of Neill and Summerhill, most private Free Schools, progressive schools and free schools within the state system, do not allow pupils complete freedom to choose what, if anything, they wish to study. In his sympathetically critical study of private free schools, Graubard reports that the longer such schools are in existence the more likely they are to have some sort of arrangement for attendance at lessons. (10) Some have contracts arranged between the pupils and teachers for a course of lessons. Some insist on attendance at a core of important lessons. In the British state system, at Countesthorpe College, the pupils are responsible for determining the choice and direction of their own courses of study but they do this together with the teachers, and in consequence gain valuable experience of planning their own work. Two of the teachers say

"The task we set ourselves was to create the conditions in which autonomy could thrive. We did not intend meekly to submit to each student's passing whims and fancies, for unless teachers are ready to be positive, forceful and ambitious in their expectations of their students they cannot hope to create the conditions for a thriving autonomy." (11)

Teachers working with pupils who come from homes or communities where there is little expectation of academic success should provide the counter-suggestion that academic success is a possibility and that careers may be open to students other than those which seem most obvious. I am not suggesting that teachers should hold up middle class culture and jobs as the most worthwhile or desirable, or attempt to recruit the most able working class pupils into the middle class. However, if children are to choose what they will do as adults, they must be aware of the possibilities, and that

may include possibilities that had not previously occurred to the children or their parents. For children at private free or progressive schools, whose parents tend to be affluent or influential, the teachers' role in extending their academic abilities and preparing them for a variety of different careers may not be particularly important. Such schools are sometimes somewhat disdainful of examination results, of success, of science and urban culture, and they place great value on rural crafts. Perhaps they can afford this attitude, because their ex-pupils will not find it too difficult to retake the places in the society they have left, should they wish to. State schools and the private free schools which cater for working class and black children cannot be little islands of rural peace which take no account of the realities and politics of modern urban society.

The case for some rigorous teaching in 'hard' subjects in such schools is put with particular force by Jonathan Kozol, because of his experience with black free schools in the United States. He says

"It is too often the rich white kids who speak three languages with native fluency at the price of sixteen years of high-cost, rigorous and sequential education, who are the most determined that poor kids should make clay vases, weave Indian headbands, play with Polaroid cameras, climb over geodesic domes" (12)

and he is also draws attention to the fact that education is not simply a matter of benefitting individuals and helping them to make a success of their lives, but of providing the rest of the community with the skilled practitioners it needs.

"Harlem does not need a new generation of radical basket-weavers. It does need radical, strong, subversive, steadfast, skeptical, rage-minded and power-wielding obstetricians, pediatricians, lab technicians, defense attorneys, Building Code examiners, brain surgeons." (13)

Kozol's point reminds us that education for free individuals and a free society is not simply a matter of individuals hearing about the possible opportunities that exist, and learning the skills necessary to avail themselves of them. In order to be free we must not be subject to the power of

those who would exploit us, and keeping this freedom is a political matter.

Teachers who are concerned about extending the liberty of children, then, do not have to avoid suggestions or even direct instruction. They should not fall into the common mistakes made by many teachers in free schools of assuming firstly that because some learning is incidental, all learning is incidental, and secondly of assuming that any learning is as good as any other. (14) There may, indeed there will, be occasions when it will be necessary to insist that children study subjects they would rather not, for, as has been said, if some knowledge is important enough for us to insist that children attend school to learn it, it would be inconsistent to allow them to choose not to learn it. However, this does not mean that children should have no academic freedom at all, for they, like most other people, learn better when they want to and when they are interested.

If children are allowed to find out things for themselves and pursue their own enquiries, although it is unlikely to bring an increase in knowledge and understanding to the whole society, it will bring it to the individual, and it will also give valuable structured experience of independent study and individual choice. As children get older they will be able to discuss with their teachers what they need and would like to learn, as the pupils did at Countesthorpe College.

It must be reiterated that though compulsion and restriction may be justified to achieve certain ends, there can be no justification for unnecessary or excessive restrictions. Therefore, whenever there is the possibility of both achieving the end and allowing freedom this should be done. If, for example, it is considered important that children learn to write, then even if they could learn just as readily by writing what did not interest them as what

did, there would be no justification for restricting their writing to the teacher's interests rather than their own. In fact, as most teachers know, it is far more effective to use, encourage and build on children's own interests as a way of helping them to learn, and so while the teacher keeps clear in his/her own mind what needs to be learned the child is allowed as much freedom of choice as possible within the necessary constraints. Advocates of free schooling would criticise this for giving children an illusion of freedom rather than the real thing, for the children are given to understand they are choosing for themselves whereas in reality they are just following the teacher's pre-ordained plan. However, if part of the teacher's and our society's plan is that children should sometimes be free to follow their own interests, the freedom would not be all illusory. Nor would it simply be a case of the teacher choosing the ends while the children were allowed to choose some of the means. Education is much too complex a process for us to describe it simply in terms of means and ends and say, for example, the end is that children learn to write, and that their stories and projects are no more than the means to that end, or that the work they choose for themselves and do on their own is no more than the means to the end of learning to work independently. The importance of the child's present as well as of preparation for the future was stressed by Dewey, who said

"When preparation is made the controlling end, then the potentialities of the present are sacrificed to a supposititious future. When this happens the actual preparation for the future is missed or distorted. The ideal of using the present simply to get ready for the future contradicts itself...We only live at the time we live and not at some other time, and only by extracting at each present time the full meaning of each present experience are we prepared for doing the same thing in the future. This is the only preparation which in the long run amounts to anything." (15)

When young children choose to work on a topic that interests them, or when older pupils select the school subjects they want or need to study, they are not simply choosing the means to an end chosen by someone else; they are both exercising freedom at that time and preparing for

other exercises of freedom in the future.

So, on the subject of children's academic freedom I would conclude firstly, that children should not be given complete academic freedom, but should have as much as possible without neglecting what we have deemed they should know; secondly, that this has the practical advantage of promoting their learning; thirdly, that even if this were not the case, unnecessary restrictions on their freedom would not be justified; and finally that amongst the important things they need to learn are how to find out information for themselves, study independently, pursue interests and undertake work for purposes other than that of pleasing their teacher. They cannot do this, or develop into people who can use a fuller form of academic freedom, without having the opportunity to practice; nor can they develop fully, intellectually or socially, without the stimulation of interaction with concerned adults. So, however anxious teachers and parents are for their children to be free, they must not simply stand aside, fearing that their influence would be restrictive, for, as Dewey said

"All human experience is ultimately social....it involves contact and communication. The mature person, to put it in moral terms, has no right to withhold from the young on given occasions whatever capacity for sympathetic understanding his own experience has given him." (16)

Schools are social institutions as well as educational ones, and many of the rules and restrictions of children's freedom at school are not directly concerned with their studies at all, but with their behaviour. If certain restrictions on children's freedom to choose what they will and will not study are justified in order that they should learn important skills, principles and facts, then on the grounds that willing the end involves willing the means, restrictions on behaviour which are necessary in order that this learning can take place will also be justified. There will, of course, be disagreement about which restrictions are necessary to maintain, in a community of young people, the

conditions necessary for learning. When I was at school my teachers appeared to think that the necessary order would be destroyed if we ate sweets in school uniform or removed our hats on the bus. It was then considered reasonable (though not by the pupils!) for teachers to restrict behaviour outside school. More recently, my own children who had been educated perfectly adequately in jeans and jerseys all through primary school were suddenly, at the age of eleven, thought to need the help of a navy blue skirt or a blazer and tie if they were to continue learning. There are many such restrictions of children's freedom in our schools which are neither necessary to promote or facilitate learning, either directly or by promoting the good order and co-operative behaviour necessary in a community, nor are necessary to keep children safe. Such restrictions, I claim, are not justified.

It is on the subject of discipline and children's behaviour that schools which attempt to extend children's freedom are most frequently criticised. Having read of the criticism by parents, press and governors of state schools such as William Tyndale Junior School,(17) Risinghill Comprehensive, (18) Countesthorpe College (19) and others, it is hard to escape the cynical conclusion that many of the critics would not have minded if the children had learned nothing, as long as they had done it quietly and unobtrusively. Many of the problems of children's behaviour that free private and state schools have appear to arise from the fact that they have a disproportionate number of particularly difficult or disturbed children. Many parents sent their children to Summerhill specifically for help with their psychological problems, and then removed them to more structured schools when they had improved. Both Risinghill and William Tyndale made efforts to retain and help difficult pupils instead of merely containing them or moving them elsewhere. This concern for difficult children is admirable, but it seems probable that because of the numbers of problem children in free schools teachers there are liable sometimes

to confuse the freedom that should be given to the normal children with the particular licence that a disturbed pupil may need in certain circumstances.

Neill himself clearly differentiated between the roles of doctor and fellow citizen, (as I would do between doctor or social worker and teacher), saying that the self-regulation he wanted children to achieve did not mean being free to destroy and upset others, and that

"The whole freedom movement is marred and despised because so many advocates of freedom have not got their feet on the ground...It is true that I have spent a good few years of my life patiently tolerating the destructive behaviour of problem children, but I did this as their psychological doctor and not as their fellow citizen." (20)

The rights and liberty that children should have in a school that values freedom should, like the rights and liberties we would enjoy in a free society, never include the freedom to destroy property, (21) disrupt others' opportunities to learn, or to terrorise the neighbourhood. The problem for teachers, as for all those who are involved in organising democratic societies or institutions, is how to respect individual rights to liberty and yet prevent infringements of the rights of others. In order to do this they will need to consider what the school rules should be, and how to make them the kind of rules which, it was argued in Chapter 4, can enlarge total liberty rather than diminish it.

First thoughts would suggest that the children in a school with few rules would be freer than those in a school with many rules, but of course it is the scope of the rules rather than their number which affects how restrictive they are. The rule that "children must behave sensibly at all times" is far more pervasive, and more difficult to keep, than a number of explicit rules stating exactly where and when bicycles may be ridden, or chocolate eaten. Again, the rule that forbids is less restrictive than the one which commands, for if you are, for example, forbidden to wear stiletto heeled shoes, then presumably you may wear any other type of shoe; whereas if the rule enjoins the wearing of a brown flat sandal with a T bar strap, then very little

room is left for individual choice. Because of this, it has been argued that school rules should forbid rather than command (22) and should be explicit rather than all-embracing. (23) However, while appreciating the need for children to have clear guidelines for certain circumstances, I would argue that to rely on this form of rule on the grounds that it is less restrictive would be to give too much importance to the quantity of freedom that the children could enjoy, and not enough to the quality. Schools may feel the need of some 'Highway Code' type of rules to avoid large numbers of children charging into each other in the corridors, but what they really want to establish is a community in which the children are aware of the needs of others, and therefore move around in a way that does not disturb other people. The rule that forbids running in the corridor is explicit, easily understood and less restrictive than an expectation of careful and considerate movement at all times. However, unfortunately, such narrow, clear rules do not help the children towards self-discipline, and they may encourage attention to the letter of the law rather than its spirit. Holt is right to stress the evil of seemingly arbitrary or retrospective laws which leave children anxious and unsure of whether they may inadvertently commit a crime. (24) However, the aim of promoting self-discipline and protecting the rights of others, will not be achieved by having narrow, explicit rules that forbid. It will be necessary to show how these rules fit into broad principles of behaviour, and it is the quality of the relationships between teachers and pupils, rather than school rules, which will play the major part in regulating behaviour in a free and co-operative educational community.

A recurring theme in the comments made by children who have attended free schools, state or private, is their appreciation of being respected by their teachers as equals in importance, if not in knowledge and experience - a respect which they believe is not shown in more authoritarian

schools. (25) Perhaps, as adults, if we are fortunate enough to have become accustomed to respect, we may undervalue its importance to children, and will expect to find something more startling than equal respect as the basis for free schools and education for freedom. It may be necessary, then, to remember how many actions, not wrong in themselves, outrage some adults when done by children. Wearing short skirts, long skirts, bright shirts, black shirts, long hair, short hair and any sort of hat will upset some teachers, parents and governors, as will talking with hands in pockets, neglecting to say 'Sir' or expressing any opinion unasked. It would be salutary for any adult who thinks equal respect is not tough enough a concept to be fundamental to a free atmosphere in a school to spend a week in any modern, bright and not obviously repressive school, and discover how frequently it is lacking. Respect is shown, or not shown, of course, not only in what teachers say to pupils, and how they say it, but in the importance that is placed on what the pupils say themselves, and the spirit in which their contributions, in social or educational situations, are received. If children are respected as people with important ideas of their own, then what they say on the subject of restriction and freedom in school must be listened to, and the extent to which they should be free to share in the organising and running of their school will be discussed in the next chapter.

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CHAPTER 12

LIBERTY, DEMOCRACY AND EDUCATION

Liberty, democracy and education

In Chapter 10 it was argued that citizens of a democracy need to be educated in order to survive in, take part in, contribute to and benefit from their society, and that a democracy needs educated citizens in order to continue to operate as a democracy. I concluded that therefore a system of compulsory education was justified in a democracy, despite the fact that this restricts freedom. As democracy requires compulsory education, and compulsory education restricts freedom it was accepted that in this respect democracy has a negative effect on the liberty of children. However, that is only one aspect of the complex inter-relationship between liberty, education and democracy. In this, the final chapter, I will attempt to draw together my previous arguments on the positive relationship between democracy and liberty and relate them to the education of children in a democratic society, for a democratic society, and within a compulsory education system. In the previous chapter I discussed children's academic and personal liberty at school, leaving the question of their political education and freedom to participate in the democratic organisation of their schools until this chapter. First, however, it will be necessary to recapitulate earlier ideas on the relationship between liberty and democracy.

Despite the admitted restriction of freedom involved in compulsory education which, it was argued, is necessary for an informed and active democratic society, it was claimed in Chapter 3 that democracy also makes a positive contribution to freedom. Contrary to Hayek's claim, (1) that liberty and democracy are unrelated, it was argued at that stage that they are connected if for no other reasons than that a democracy allows people the opportunity to be involved in the making of political decisions if they so wish, and

that, because of the opportunity it affords to remove any elected leaders who show dictatorial tendencies, it reduces the risk that they will be deprived of other important freedoms. In Chapter 5 the relationship between freedom and democracy was considered further and it was claimed that as discussion and the opportunity for dissent are essential elements of democracy, certain basic freedoms must be guaranteed to individuals and minorities as well as to the majority if democracy is to continue. Thus, it has been shown that there is a positive relationship between democracy and liberty: firstly because having the opportunity to take part in government is a freedom in itself; secondly, because there is a contingent relationship between freedom and democracy due to the fact that other valued freedoms are less likely to be taken from those who have some control over the making of political decisions and the distributions of power than from those who have not; and thirdly, because without the basic freedoms we require in order to participate in political life democracy could not continue. Thus, though democracy may require some restrictions of freedom it is also a form of freedom in itself, provides some safeguard for other freedoms, and could not survive without them.

The relationship between democracy and education is similarly complex, but can usefully be considered in three ways: education within a democratic society, education for a democratic society and democracy in schools. However, as will be seen, these three subjects overlap considerably. It will not be possible, or even desirable, to prevent discussion of one of these topics from flowing over into the others, for democracy in schools is part of education for democracy and both are essential elements of education within a democratic society. Schools and other educational institutions exist within a wider society, and because decisions about education, its distribution and content are political decisions, these will be made, in a democracy, with some degree of reference to or involvement by the citizens. I should emphasise at

this point that when I say, for example, that 'we' consider certain knowledge important or decide that children should learn such-and-such, the 'we' refers to the whole community and not just to teachers, school governors or the D.E.S. In a society more fully democratic than our own the content of the school curriculum would be a subject of discussion - a discussion which, like those on other important subjects, children would be educated to participate when they were able. It is because schools are part of a wider society with a legitimate interest in its life that they cannot exist as little, isolated democratic states which pay no regard to the views or interests of the wider community. (2)

However, at the same time as existing within a democratic society (which should treat education as a matter of interest and a crucial concern) schools are organisations with power structures of their own and their own internal decisions to be made. If they are to be democratic institutions then the people who work in them - staff and pupils - will be involved in the making of those decisions, and this participation will be educative as well as intrinsically worthwhile. Thus, members of democratic society have an interest in and responsibility for education; education prepares children to play their part in the democratic society; an important part of education for democratic participation involves practical experience of democracy in school; and that practical experience of democracy is valuable in its own right, and not simply as a preparation for the future. Clearly, education in a democratic society, education for participation in a democratic society and democracy in schools are interconnected, but in as far as they can be separated I will begin with the first strand - education in a democratic society.

As was stressed in Chapter 5, citizen participation and involvement - and not simply the election of leaders - are the essence of democracy, and it was argued in Chapter

10 that it is necessary to have certain skills, knowledge and attitudes in order to play one's part in a democratic society. It was also argued that as children are not the property of their parents but young members of their society, that society has a legitimate interest in seeing that they are taught what they need to know to co-operate in the life of their community as well as to be able to make choices as individuals. A democratic society will place high value on educating the young as individuals with their own lives to lead and as participants in joint democratic decisions. High priority would be given to educational matters and there would be wide discussion of the curriculum and organisation of schools. If this were not the case, and democracy were only what Schumpeter claims it is (3), then it must be acknowledged that it would have little to do with education. With citizen involvement at a low level there would be no public discussion about the sort of schools and education required, or where in the list of priorities for government spending education should come. Prospective leaders might pick an education policy if they thought it would be popular and help in their search for votes, but this would only be part of their self-advertisement and not chosen to serve the interests of the children or of their society.

In a Schumpeterian democracy there would be little scope for democracy within the school either, for although theoretically there would be the possibility of the only democratic practices Schumpeter acknowledges - open competition for positions of power and elections - in practice it is unlikely that a society which places high value on leadership and efficiency and low value on the contribution of the mass of people would be one in which pupils elected their teachers, or teachers their Head. Decisions would be taken by the Head and senior staff, then, who would be appointed and not elected, and they would not have to devote much time to educating children to take part in a democratic society. The participation demanded in Schumpeter's democracy is so

minimal that no-one would need to be educated for it. As all anyone, except the prospective leaders, would have to do is plump for one leader rather than another for no discernable reason except that s/he appeared to be a good leader, no knowledge would be necessary, no skill, no practice, and therefore no education for democracy.

However, for greater public involvement in a democratic society, education is necessary and schools have an important part to play in preparing people for that involvement. Those who consider that educating people for democratic participation is Utopian should note that members of the middle class are more likely to be involved in political movements than members of the working class, and, unless it is believed that this is part of their genetic inheritance, we must assume that their enthusiasm for involvement has been learned. As was suggested in Chapter 5, people are more likely to be involved and active if they believe they have a realistic chance of influencing events, if the issue is important to them, and if they have been socialised or educated to participate. For a long time English public schools claimed to educate boys to be leaders, and, as so many of our leaders are products of those schools it may be assumed that their political education was successful in achieving its ends. Until we have tried as hard to educate all children to participate in our democratic institutions and co-operate in the running of our society we should not dismiss the majority of the population as incapable of participation.

Democratic participation at the micro level, in areas close to the individual, is always educational, but at work or in political or social organisations the education will be incidental, perhaps not even noticed by those whose object is to manufacture articles for sale, campaign for a community centre or organise a Mothers' and Toddlers' Club. In schools, however, where the purpose is to educate, the balance between

participatory democracy in its own right, as a way of running an organisation, and the educative aspect of participation would be different. Both aspects should still be present: participation in the school (or class) organisation in order to learn how to take part in other and larger organisations, and participation for the same reasons that it is ever desirable - basically because it is right that people should join together to help make the decisions that will affect their lives, and to control the extent to which others have power over them. Nevertheless, we would expect that in school, more than in any other institution, the educative function would predominate, and not be incidental, and so special efforts would need to be made to teach children the knowledge, skills and attitudes that will enable them to play their part in the democratic organisation of society.

The need for more and better political education has been argued convincingly and often. The Politics Association was founded in order to develop 'political literacy' in secondary school pupils, and in the mid-sixties the Newsom Report said

"A man who is ignorant of the society in which he lives, who knows nothing of its place in the world and who has not thought about his place in it, is not a free man even though he has a vote. He is easy game for 'hidden persuaders'" (4)

(amongst whom, I would argue, we would find Schumpeter's would-be leaders competing for power.) Yet even so, because of fear of bias and indoctrination, and perhaps because we do not value democratic participation highly enough, political education is all too often restricted to the learning of facts about the constitution and parliamentary procedure rather than being a preparation for participating in a democratic society. Our children's political education suffers from the fact that though, as a society, we claim to value democracy, we are extremely suspicious of politics!

There are, I suggest, three strands to the sort of political education young people need in a democracy. Firstly,

they will need a broad education which will teach them the skills and knowledge of our society and develop their intellect and understanding. Democracy cannot be practised in the abstract and all the experience in the world of debates, votes and elections will be useless without some understanding of the subjects being debated about which decisions will be made. Secondly, they will need more specific knowledge about political issues and institutions and the distribution of power in our society; and thirdly there will have to be practical education within the school of the workings of a democratic organisation, for, as Mill said

"We do not learn to read or write, to ride or swim, by being merely told how to do it, but by doing it, so it is only by practising popular government on a limited scale that the people will ever learn how to exercise it on a larger"

(5) However, the purpose of organising a school democratically is not simply to prepare children for future involvement in democracies, though this is an important part. Children are not simply embryonic citizens, trainee democrats or even future individualists. They are people with current feelings and wants who feel oppressed or undervalued if their own views are silenced or ignored, or their own wants dismissed as unimportant or irrelevant, and so whenever possible they should be involved in the making of decisions that effect them, just as adults should. The relationship between education and democracy is not simply one of a preparation for future participation in a democratic society, with democratic participation in schools existing only for educative purposes. Democracy in schools is required in its own right. It is not easy to combine democratic activity for its own sake and education for democracy, but just as, for example, English or Music teachers try to provide opportunities for children to do work that is intrinsically worthwhile as well as being a good preparation for future work, so political education should provide opportunity for political activities that are valid in themselves as well as being educational.

I have claimed that compulsory education is justified

because there are certain things children need to know in order to survive in our society, to become part of the community and play their part in it, and to be able to make reasoned choices as individuals, and for these reasons I argued that children cannot be allowed academic or social freedoms that will defeat those purposes. Similarly, I would argue that they cannot be allowed the political freedom to decide democratically that their school will become an institution with a different purpose. It was argued in Chapter 4, that consent is not necessary to justify all obligations and restrictions of liberty, and if this is true of adults there is no reason for it not to be true of children also. If, in a free and democratic society, there may be just restrictions of adults' liberty, and non-contractual obligations to other members of society, then these may exist in a free and democratic school also. I claim that they do, and that children are no more free from the obligation to make some contribution to their society - a contribution which cannot be made from ignorance - than adults are. However, despite that, there is room for a great increase in participation by pupils in the running of their schools, and many more areas of common concern over which they can exercise democratic control. This will not be a simple matter, as any attempts to introduce greater democracy into a school will face all the problems common to any democratic institution, plus the particular problems associated with young people whose experience is relatively limited and whose rationality may not be fully developed. However, the discussion and resolution of common problems is an essential feature of democracy, and discussing and attempting to resolve problems in school is an essential part of education for and in a democratic society.

One of the problems that all democratic organisations share is that of ensuring that those who take the decisions are responsible for the consequences, for it is clearly unfair if everyone votes to pursue one course of action and

then responsibility for its failure is shouldered by one or two individuals. Seeing this problem as a barrier to the introduction of greater democracy in schools Musgrove says

"Responsibility is properly linked with power. Pupils are members of a school in a different sense and on different terms from their teachers. To be responsible is to be liable for punishment if things go wrong; pupils cannot be punished like their teachers for the failure of school policies even if they had a hand in shaping them. Their claim to a share in power is weak." (6)

However, Musgrove's conclusion results from his viewing the problem the wrong way round. Instead of saying that as pupils do not share responsibility they should not share power, we should say that as pupils are deeply affected in important ways by decisions made in schools they should, if possible, share power, and therefore ways should be devised to enable them to share responsibility. Wrong decisions might damage a school's reputation or spoil a teacher's chance of promotion, but the most serious consequences fall on the pupils. And so, if they are thought to be capable of participation, and of enjoying or suffering the results of that participation, their claim to a share of power is strong, (even though, as I argued in Chapter 8, adults will be sometimes be right to protect children from the consequences of their own actions.) The problem of correctly assigning responsibility for decisions and blame for mistakes is a real one, but it is a problem for all democratic organisations. (7)

One way round the problem of sharing power and responsibility in our present education system is suggested by Scrimshaw who says that greater democracy could be introduced in only those schools in which the head was willing to take the risk of allowing others to take decisions for which s/he would still be legally responsible. (8) He imagines that democratic and conventional schools would co-exist and that people would choose the sort of organisation they liked best - eventually being won over to the democratic schools. Unfortunately, with the decline in the number of school-age children and the cost, in time and money, of travel, I do

not feel this is a practical suggestion in most areas of the country, for though the picture of people choosing between different schools has some attractions, the fact is that for most people there is no real choice. In a society which gave a higher priority to education, democracy and education for democracy than does our own, Scrimshaw's suggestion might be feasible, but in such a society it would hardly be necessary.

However Scrimshaw is right to say that heads who are willing to give up some power even though they will still be held legally responsible can introduce greater democratic participation in their schools. In some schools great efforts have been made to make themselves more democratic, and much may be learned from their successes and failures. Perhaps there has been too much emphasis on the outward forms of democracy such as electing representatives to a School Council which has little real power and often presents a facade of democracy which children mistrust. School Councils do have a useful part to play, but seem to have been most successful in small private free schools where direct democracy could operate. At Summerhill, for example, Neill, all teachers, and the pupils over seven had one vote each in the school council which met every week. Rules were made, complaints raised, and malefactors punished or arrangements made for reparation. Even at Summerhill, however, not all matters were settled by the council. Sleeping arrangements, food, payment of bills and the appointment of teachers were organised by Neill and his wife. (9) Clearly, weekly meetings and discussions take time, but if they are considered important time will be found, and if one result is that children accept the decisions that are made, then some of the time that would otherwise be spent on rule enforcement will be saved as well. One of the arguments against children being allowed to make important decisions for themselves is that they lack the capacity to look far ahead. In so far as this is true it will result in

decisions being made, changed and made again, but although this may be wearying for the adults involved it is part of the educative process. Rules will be made when the need for them is apparent, (10) and it may be necessary for each new generation of children to discover the need for themselves.

Beacon Rise, the school founded by Bertram and Dora Russell was also small enough for democratic decisions to be made through discussion of all the pupils. Dora Russell said

"This was a democracy in which people had to learn by experience and discussion how to live amicably with one another. To bring up a child under a rigid system of authority, enforcing implicit obedience... seemed to us a poor preparation for life in a democratic society. The likely result of such treatment would be either timid conformers or refractory rebels. But living day by day in discussion with those who were virtually your equals in age and attainments could lead you to acquire, both emotionally and rationally, the democratic qualities of mutual understanding and tolerance." (11)

The debate about the best size for a school is always with us, with claims for the advantages of large schools on the grounds of cost effectiveness and availability of specialist staff being argued against the family atmosphere and intimate knowledge of pupils which may be found in small schools. This is not the place to pursue these arguments. However, I would claim that small scale direct democracy is better suited to the needs of children than is representative democracy, both as a way of making day-to-day decisions which can be seen to be fair, and of introducing the concept of democracy in a clear way. If larger schools are thought to have other advantages which outweigh this, then ways must be sought to overcome the problems of size. (12)

The head of one state secondary school who had attempted to encourage democracy in his school claims that, rather than have a school council with no real power, it is better to let the pupils elect ad hoc committees with certain clearly defined powers and responsibilities for certain specific purposes. He writes

"We have gone through swings and shifts and these I recognise as educational processes in themselves. Thus our seniors have voted out, in, out and in the prefect system; they have tried and rejected the School Council as such;

they have veered from no uniform for 7th formers and glide time to uniform and strict hours" (13)

If this sounds like a recipe for chaos, it should be remembered that this headteacher is not trying to find a correct decision on whether it is right to have either prefects or uniforms. He wants the pupils to decide for themselves, and recognises that what suits one year group may not suit another and that sometimes the only thing that makes one course of action better than another is that the people involved are happy with it. What is important in this instance is the educational value of debate and decision-making which must, like all other school work, be done afresh by each new class. It will not be easy for teachers to listen to arguments on the same subjects year after year and sit by while arrangements are changed and then changed back again, but if they are convinced that it is important and educative for pupils to be involved in the making of decisions then they will do it.

The first head of Countesthorpe College also wanted to involve the pupils in decision making, but first he took the step that I consider crucial to the success of a democratic school: he involved the staff. Brian Simon explains that a decision was made

"that the school was to be run by the staff as a whole, through discussion and joint decisions arrived at by consensus. The head would participate in the discussion but would carry out decisions so reached...This step..was seen as a means of ensuring that each and every member of the school's staff could feel a genuine and equal responsibility for running the school, so that participation and involvement could be maximised." (14)

The participation of the staff was considered important in order that the school should continue to be innovative and flexible. So often a new head will initiate change, but then the school becomes static. As the impetus for change often comes from younger staff, who are usually newer and more junior, a democratic structure is necessary if they are to make their contribution. However, equally or even more important reasons for having a democratic staffroom as well as pupil representation are that it helps to ensure that the

staff are united in their attempts to increase the democratic participation and the liberty of the pupils, and it provides the children with an example of equals sharing responsibility, discussing, arguing, disagreeing and coming to a decision which binds them all.

If we compare various schools which have tried to increase children's liberty and democratic participation, it would appear that having a staff that is united and enthusiastic about the venture is of critical importance. Most free schools will attract some measure of antagonism from outside. Private free schools have sometimes to face the wrath of the neighbourhood and local press, but at least they should have the support of parents and teachers who have chosen the school, knowing its philosophy. State schools do not have this advantage and have to win local support, and any dissent among the staff about their aims makes this much more difficult. As John Watts, the second head of Countesthorpe College said

"An authoritarian progressive will usually come unstuck when outside agencies can exploit the division he has created among his staff. When this happens the reform aimed for by the head is thwarted, the power passes out of the school even to the point of its closing down and, more to the point, the children suffer." (15)

Both Risinghill Comprehensive and William Tyndale Junior School, which were closed by the local education authorities, had heads who did not have the full support of all their staff, and who were accused also of not supporting the staff. (16) Gretton and Jackson tell of a deep division amongst the staff at William Tyndale which was exploited by unsympathetic governors and parents. (17) Nearby John Milton School managed to weather some of the same problems, largely because the head and the teachers were united in their aims, and the school secretary and dinner ladies, all of whom shared a staff room, were also included by being invited to staff meetings, and helped to feel part of the school. As these ancillary workers were mostly parents as well, they were on the side of the staff, knowing what they were trying to do and why. At Risinghill, many of the staff

felt that the head did not support them or understand their problems, and imposed a system on them that they did not believe in or could not make work. (18)

At Countesthorpe, on the other hand, the staff worked together with the head, and managed to survive the adverse publicity and criticism which seems to be inevitable in the first few years. John Watts said that in a participatory system such as they had at Countesthorpe the role of the head is different.

"Instead of experiencing the gratification of seeing my own will take on flesh..I now feel I have made possible and participated in a for of school in which teachers and school students have been able to enjoy an increase in dignity which results from their sense of determining to a large extent the conditions under which they work and grow." (19)

The inevitable compromises that will come in such a school might dismay a head who was determined to extend children's liberty and democratic participation, and feared the conservatism of the staff. However, it is not only for prudential reasons that teachers and other school staff ought to be involved in the running of the school. If a head genuinely believes that it is right for pupils to be involved in the making of decisions that affect them in their place of work, then s/he cannot, with any consistency, deny this to the teachers and other staff who also work there, and who should provide an example of democratic co-operation.

There will be disagreements amongst the staff, of course, and sometimes, as we would expect, the decisions that are made by the pupils will be unwise, but so will some of their spellings be wrong, some writing illegible and some ideas ill-expressed. (20) Children are at school to learn and, so, if we want them to learn about democracy, we should not regard petitions, deputations etc. as a nuisance or 'trouble', but as signs that they are interested in participation. School is the place to improve, and teachers should welcome the first clumsy attempts at participation just as they welcome the first pictures of a bright green circle

that is meant to be Mum. An important difference, however, between exercises in books and exercises in democracy is that mistakes in the former do not affect anyone but the pupil who makes them: mistaken democratic decisions effect others. Any democracy should be concerned to prevent the tyranny of the majority and to protect the rights and welfare of minorities and dissenting individuals, but this is particularly important in schools as the pupils are still learning democratic attitudes.

Musgrove voices concern about the danger to pupils if teachers give up their right to determine acceptable conduct and allow children to be self-governing, in this respect. He says

"When schoolmasters do not control schoolboys, schoolboys do- but usually more repressively" (21)

and he cites the example of nineteenth century public schools when the boys' activities outside lessons were governed largely by their own rules and bullying was rife. However this situation of which Musgrove writes was not one in which co-operation and democracy were fostered. The boys may have been self-governing, but they were not democratic, just as a country which achieves independence can be self-governing and still have a despotic government. Teachers should always be on guard to see that bullying does not flourish, but I see no reason to suppose, as Musgrove does, that this is more likely to happen when pupils share power, or to equate the despotic rule of a self-appointed group with democracy in schools. Indeed, democracy is usually taken to be some defence against tyranny, and no teacher who valued it would, like the 19th century head of Winchester cited by Musgrove, refuse

"to be informed of schoolboy bullying out of a sensitive regard for traditions of schoolboy autonomy." (22) Neill says that the Summerhill General School Meeting often has to tackle the problem of bullying (23) but that this is a problem the children take very seriously. I do not accept all his claims for his school, but the one that bullying is less common

than in strict schools seems reasonable. If children have a relaxed relationship with their teachers which enables them to speak of their worries, and if teachers know their pupils in a wider context than that of the classroom, there will be less scope for bullies to operate, and possibly they will feel less urge to work off their own frustrations and inadequacies on those who are smaller or weaker.

I have already stressed that participatory democracy involves more than electing leaders and more even than voting on a particular issue. There must be discussion - talking and listening - so that everyone's point of view is aired and, it is to be hoped, understood and whenever possible accommodated. This is a feature of democracy in small organisations which should be particularly stressed in schools and drawn to pupils' attention in the more formal political education which they receive. It tends to be overlooked if we look to Westminster for our model of democracy and think that the point of a debate is to muster as many like-minded voters as we can, or, at a slightly higher level, persuade others to think as we do and vote with us. This may be necessary in a parliament of representatives, elected to carry out a party programme, but when everyone is his or her own representative, and no one is let down by a change of mind or policy, then, it should be remembered that listening is as important as talking, and understanding the opposition is as important as defeating it. If this is the democratic style which characterises democracies in school there will be fewer occasions when a minority is left unhappy about the decisions reached, and it is even less likely that there will be a permanent minority that is consistently overruled and excluded from power.

Disaffected minorities, though less likely to be found in a small community like a school than in the country as a whole, may still occur. Perhaps one group of pupils in an Animal Rights Group might want to stop meat

being served for school dinners, while a group of Muslim children want to have Halal meat provided. It is unlikely that either group would be satisfied by the result of a vote, and the problem might be complicated by the presence of a majority of children who do not have strong feelings either way. 'One person one vote' is thought to epitomise democratic justice, and the idea that anyone affected by a decision should have the opportunity to influence that decision seems simple enough in principle, though not always easy to organise. However, sometimes justice seems to demand that we should distinguish between those who are very much affected by a decision and those who are less so, or between the small group with strong feelings and those in the rest of the community who do not really mind. (24)

Even if there were answers to these problems and I knew them, this would not be the place to reveal them. My purpose here is to show that the problems of democracy in school are very similar to the problems of democracy in any other organisation. Is X a decision which should be taken by the whole community or the group most affected by it? Is Y a decision that is of no concern to the whole group, and should properly be made by an individual? Is Z a decision that the group is not competent to decide, and which should be taken by an expert? These questions arise in our society every day. (24) We argue about the answers to them, and it is right that we should. Our freedom to do so is highly valued, and greater freedom to be more directly involved in such discussion would reduce the power that others have over the important decisions of our lives. If the presence of problems and difficulties in our democracy are not thought to provide an adequate reason for abandoning it in society as a whole, then their presence in schools is not an adequate reason for arguing that we should not have democracy there. We should be careful of demanding perfection in school democracy when we do not expect it in other democratic institutions. The presumption, in schools as elsewhere, should

be in favour of direct democratic participation whenever possible, with the onus on those who believe it is not appropriate in particular circumstances to demonstrate why.

Simone Weil said that

"The least evil society is that in which the general run of men are most often obliged to think while acting, have the most opportunities for exercising control over collective life as a whole, and enjoy the greatest amount of independence." (25)

I would agree, and claim that the same should be said about schools with the additional requirement, of course, that they educate their pupils. Children will not be able to participate as fully in the running of their society as most adults would, but a sincere valuation of democracy will involve maximising opportunities for them to practise democracy as well as to learn about it. It is to be hoped that they will learn that there are problems to be faced in any democratic organisation, but that these will not be solved by abdicating our responsibilities and leaving what should be joint decisions to leaders. By participating in the exercise of power they will not find freedom, if by that we mean the freedom to do what they wish and make all the decisions that affect them as if no one else mattered. Sometimes their wishes will be overruled. However they will gain important freedoms, and, in having some control over the power that other people can exercise over them, will safeguard others. Democracy is not freedom; it does not guarantee freedom; but if we value the freedoms it does offer, then we should allow our children to share them as soon as they are able, and should educate them to join with others in the running of our society. They are part of that society; it should be organised to cater for their needs and also to enable them to participate in it as fully as they are able, sharing the responsibilities and benefits of membership, its obligations and its liberties.

References

1. Hayek, F.A. The Constitution of liberty P.13ff
2. For a strong argument against schools which attempt to exist as islands, ignoring the problems and needs of the wider society see Kozol Free schools P.30 - P.55
3. Schumpeter, Joseph Two concepts of democracy. In Quinton, Anthony (Ed) Political philosophy
4. Ministry of Education Half our futures: a report of the Central Advisory Council for Education
5. Mill, J.S. Essays on politics and culture P.186
6. Musgrove, Frank Patterns of power and authority in English education P.86
7. As is demonstrated by current discussions about the surcharging and disqualification of local councillors who are following local party policy and breaking the law by refusing to set a rate.
8. Scrimshaw, Peter Values and authority in schools P.70ff
9. Neill, A.S. Summerhill P.54 ff
10. Ibid. At Summerhill, for example, the question of bedtimes is discussed at the beginning of each term.
11. Russell, Dora The tamarisk tree, Vol. 2 P.28
12. In Countesthorpe College, for example, the school was divided into teams.
13. Johnson, J. Garfield Changing institutions from the inside. In Watson, John E. Policies for participation P.127
14. Simon, Brian In Watts (ed) The Countesthorpe experience P.21
15. Watts, John Op. Cit. P.125
16. Gretton & Jackson William Tyndale: collapse of a school of a system? P.57 - P.58
17. Ibid.
18. Berg, Leila usRisinghill: death of a comprehensive
19. Watts Op. cit. P.129
20. This point is stressed by Pat White, Beyond domination P.129 "Just as no-one would expect to walk into a school and find stacks of exercise books filled with flawless work, so no-one should expect to hear of schools which run like clockwork with pupils exercising the judgment of a Nehru or a Kissinger and demonstrating the attitudes of a Martin Luther King."
21. Musgrove Op. Cit. P.81
22. Ibid.
23. Neill Op. cit. P.56
24. For example, a major point of contention in the 1984 Miners' strike was whether there should have been a national strike ballot. On the one hand it was argued that the men whose local associations had voted against the strike should not then be called out without

a national ballot. On the other hand, miners from peripheral coalfields argued that the future of their pits and jobs should not be decided by the vote of those miners from more secure areas. The question of who was affected by the decision, and who should take it was bitterly disputed.

25. Weil, Simone

Oppression and liberty P.103

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